

BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION

BAYS No. 33-36, SECTOR-4, PANCHKULA- 134112, HARYANA

Case No. HERC/RA – 14 of 2019

DATE OF HEARING : 18.12.2019

DATE OF ORDER : 18.12.2019

IN THE MATTER OF:

Application seeking review of the order dated 18.04.2019 passed by the commission in petition No. HERC/PRO 16 of 2018.

Review Petitioner

Shri Tej. Ram

Respondent

Dakshin Haryana Bijli Vitran Nigam

Present on the behalf of Review

Petitioner: -

None

Present on the behalf of

Respondent: -

Smt. Sonia Madan, Advocate for Respondent

QUORUM

Shri D.S. Dhesi, Chairman

Shri Pravindra Singh, Member

Shri Naresh Sardana, Member

ORDER

1. Brief Background of the Case:

Sh. Tej Ram s/o Sh. Puran Mal C/o M/s Saurabh Industries Nahar Road Ellenabad filed Petition PRO 16 of 2018 with regard to the applicability of MMC Rs. 400 per kVA instead of Rs. 400 per kW and charging of actual expenditure instead of fixed service connection charges Rs. 750 per kW/kVA or Rs. 2000 per kW/kVA by amending notification.

The Commission disposed of the Petition vide its final order dated 18.04.2019. The operative part of the order is as under:

*“5.6 The Commission is of considered opinion that the Petitioner is required to deposit all the legitimate charges including ACD and Service Connection Charges considering as New Connection. Moreover, the Petitioner’s prayer with regard to wrong billing and re-connection has already been well settled by various forums namely Ombudsman, Permanent Lok Adalat & Whole Time Directors of the Respondent and require no further judgement of the Commission in this regard.
5.7 The Commission granting relief to the Petitioner directs the Respondent to levy the amount as mandated for New Connection in 6 (six) equal instalments. “*

2. The Review Petitioner reiterating the submissions made in the PRO 16 of 2018 in his Review application has prayed as follows:

- 2.1 DHBVN to decide on his application dated 06.09.2013 regarding RCO
- 2.2 To update circular D-7/2010
- 2.3 DHBVN to comply with the orders of Public Utility Service Court Sirsa
- 2.4 To update the order dated 10.04.2015 of Appellate Tribunal for electricity appeal no 75-76 and 164, regarding charges to be recovered by DISCOMs for new connection as well as extension of load
- 2.5 To update and intimate the final report of energy audit of his case.
- 2.6 To update and intimate the investigation report by vigilance wing in his case.

3. REPLY OF THE RESPONDENT

- 3.1 That the present application has been filed by the Petitioner praying for similar reliefs as sought in the original petition. The Petitioner has prayed for (i) refund of monthly minimum charges (MMC) for 16 days period from 10.09.2011 to 26.09.2011; (ii) refund of surcharge amounting to Rs. 2463/-; (iii) refund of bill for 2 months from 29.04.2012 to 27.06.2012; (iv) refund of bill amounting for 2 months from 11.03.2013 to 10.05.2013; (v) Interest @ 18% on connection security deposited by the Applicant; and (vi) refund of fees paid to HERC amounting to Rs. 34,000/-.

That the instant Petition is untenable in its present form. The Petitioner has under the garb of review sought reliefs which has not been allowed by this Hon'ble Commission after due consideration of facts of this case. The Order of the Hon'ble Commission dated 03.04.2019 is categorical and specific. There is no omission/error apparent on the reading of said Order. The Petitioner has in fact claimed reliefs in the present application, which cannot be considered in review jurisdiction. An application seeking modification of the Order for

allowing claim that has not been allowed despite similar grounds being urged in main petition cannot be considered in review jurisdiction. The instant application is therefore, an abuse of process of law and liable to be rejected as not maintainable.

“The Petitioner’s prayer with regard to wrong billing and re-connection has already been well settled by various forums namely Ombudsman, Permanent Lok Adalat & Whole Time Directors of the Respondent and require no further judgment of the Commission in this regard.”

- 3.2 That in view of the above-mentioned Order of the Hon’ble Commission, all the issues raised in the present Petition under the garb of review stands settled and there is no error apparent in the decision of the Hon’ble Commission providing cause of action for review of the order of the Hon’ble Commission.
- 3.3 That it is pertinent to reproduce the law settled by the Hon’ble Supreme Court in judgment dated 8th August, 2013 under Writ Petition (CRL.) 135 of 2008 with respect to scope of Review under law. The relevant part of the said judgement is reproduced below: -

“This Court has repeatedly held in various judgements that the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient. ”

Also, in *Sow Chandra Kante & Anr. Vs. Sheikh Habib* (1975) 1 SCC 674, Apex Court held as under: -

“Mr. Daphtary, learned counsel for the petitioners, has argued at length all the points which were urged at the earlier stage when we refused special leave thus making out that a review proceeding virtually amounts to a re-hearing. May be, we were not right in (sic.) refusing special leave in the first round; but, once an order has been passed by this Court, a review thereof must be subject to the rule of the game and cannot be lightly entertained”

The prayer for review of the order of the Hon'ble Commission has no basis in view of the fact that the Petitioner has failed to establish as to what constitutes in this case “error apparent” or “sufficient grounds” and “sufficient reasons” as enshrined in the law for seeking review of an order / direction including a misconception of fact or law or even a misapprehension of the true state of circumstances.

In view of the foregoing, it is respectfully submitted that Petitioner have failed to set up any case fit for review of order of this Hon'ble Commission dated 03.04.2019.

- 3.4 That it is submitted that review is by no means an appeal in disguise and there is a difference between an erroneous decision and an error apparent on the face of the record. The Petitioner is seeking re-appraisal of facts under review

jurisdiction, which is not permissible under law. Thus, the instant petition deserves to be dismissed on this short score alone.

The relief-wise comprehensive submissions are submitted by DHBVN hereunder in lieu of para-wise reply..

Brief facts and events –

Sr. No.	Date	Particular
1.	11.03.2011 to 10.09.2011	Period for which Seasonal Temporary Disconnection Order (TDCO) was granted by DHBVN for 149.622 KW connection for M/s Sourbh Industries, Nohar Road, located at Ellenabad
2.	10.04.2011	M/s Sourbh Industries, factory of the Petitioner consumed electricity over and above the prescribed limit as per DHBVN circular D-7/2010. Thus, the TDCO was automatically revoked in accordance with the prevailing regulations.
3.	26.03.2012	Petitioner approach CGRF challenging the revocation of TDCO by the DHBVNL and sought refund of the fixed charges paid in the bill for the TDCO period.
4.	01.04.2012	Petitioner applied for grant of seasonal TDCO from 11.04.2012 to 10.09.2012
5.	11.04.2012	Petitioner was informed that as per Sales Circular D-7/2010 and D-25/2011, the Petitioner is liable to make an application 1 month prior to seasonal TDCO commencement date. It was also intimated that resubmission of application shall be made in accordance with circular. However, no resubmission of application was made by the petitioner in accordance with circular. Infact, the petitioner merely continued to dispute non-approval of TDCO on frivolous grounds.
6.	10.04.2012	CGRF held that the TDCO should have been revoked w.e.f. May 2011 instead of April 2011. DHBVN was directed to refund the fixed charges uptill month of April 2011.
7.	27.06.2012	The electricity connection of Petitioner was disconnected due to non-payment of bill.
8.	26.07.2012	Petitioner approached Electricity Ombudsman, Haryana against the order of the CGRF dated 31.08.2012
9.	31.08.2012	Electricity Ombudsman held that the electricity consumption during the period March 2011 to April 2011 is beyond permissible limit and the Petitioner has violated the conditions of Circular. Accordingly, DHBVN was directed to charge normal tariff for the entire period for the entire TDCO period, i.e. 11.03.2011 to 10.09.2011.
10.	29.10.2012	Connection of Petitioner restarted on payment of bill.
11.	10.01.2013	Petitioner applied for seasonal TDCO from 11.02.2013 to 10.08.2013.
12.	11.03.2013	Competent Authority of DHBVNL rejected the request for grant of seasonal TDCO as the industry had not run for complete period of preceding 6 months as per sales circular D-25/2012 and thus, the TDCO could not be approved as per conditions of Sales circular.
13.	10.04.2013	Petitioner requested TDCO again from 29.04.2013 to 10.10.2013
14.	12.04.2013	Seasonal TDCO of Petitioner was approved from 29.04.2013 to 10.10.2013
15.	18.04.2013	Petitioner submitted a letter to DHBVN stating that it will be liable to pay fixed charges only uptill 29.04.2013 and refuted payment of same for the month of May 2013 as per sales circular 25/2012.
16.	25.04.2013	DHBVNL replied to the letter of the Petitioner mentioning the correct amount of bill and acknowledging the amount paid by the petitioner.
17.	26.04.2013	Petitioner submitted request for disconnection.
18.	26.04.2013	The order for disconnection was passed and permanent disconnection was effected from 10.05.2013.
19.	16.09.2013	Petitioner requested DHBVNL to restore disconnected electrical connection. DHBVN replied to the request of the Petitioner that disconnected connection cannot be restored and only fresh connection can be issued on deposition of requisite documents and fee. 00
20.	07.11.2013	Petitioner approached Permanent Lok Adalat (PLA), Public Utility Services, Sirsa seeking restoration of connection disconnected on request of the petitioner
21.	19.11.2013	PLA disallowed the request of the petitioner for restoration of connection and directed that new connection be released on deposition of Rs. 1,30,016/- by the Petitioner.
22.	2013-2016	Petitioner did not apply for fresh connection
23.	2016	Petitioner filed a complaint at CM Window stating all facts mentioned above and requesting refund of certain charges and other reliefs. However, reliefs sought in present Petitioner were not urged at that time.

Sr. No.	Date	Particular
24.	10.11.2016	Complaint of the Petitioner was deliberated by Whole Time Director of DHBVNL, which considered the grievances of the Petitioner in detail. A lenient view was given to the case of the Petitioner and following broad decisions were made – a) TDCO was allowed for the period 11.03.2011 to 10.09.2011 and fixed charges for the said period was refunded to the Petitioner. b) Fixed charges for the period 26.04.2013 to 10.05.2013 was refunded to the Petitioner.
25.	02.05.2017	DHBVN complied with the order of WTD dated 10.11.2016 and sanctioned refund of Rs. 2,86,857/-.
26.	26.03.2019	Petitioner approached HERC and sought reliefs as sought in present Petition. The reliefs were urged for the first time before HERC.
27.	26.03.2019	Matter was heard before HERC and the Commission order parties to sit and resolve all issues and send a detailed report before next date of hearing
28.	18.04.2019	HERC passed a detailed order and upheld the order of WTD and other forums. In addition, it was ordered that service connection charges be taken from the Petitioner in 6 equal installments.

Issue no. 1 – Refund of monthly minimum charges (MMC) for 16 days period from 10.09.2011 to 26.09.2011 –

The MMC charges from 10.09.2011 to 26.09.2011 was charged to the account of the Petitioner as the seasonal TDCO was uptill 10.09.2011. The petitioner did not get extended the period of TDCO and hence, the fixed charges were charged w.e.f. 10.09.2011 in accordance with the circular of the Respondent. Thus, refund for alleged period is not payable.

Issue no. 2 – Refund of surcharge amounting to Rs. 2463/-

The surcharge of Rs. 2463/- was imposed on account of delayed payment of bill of April 2012. The bill amount for the month of April 2012 was Rs. 1,66,948/- and the same was due on 24.04.2012. However, the said amount was paid on 30.04.2012. Accordingly, surcharge was levied @ 1.5% of bill amount till subsequent bill as per regulations of the Respondent. Thus, refund for surcharge on account of delayed payment is not payable.

Issue no. 3 - Refund of bill for 2 months from 29.04.2012 to 27.06.2012 -

The factory was running from 29.04.2012 to 27.06.2012 without any approved TDCO. Accordingly, bills were generated on the basis of fixed charges in accordance with the conditions of the Respondent.

The said charges are payable as per the prevailing regulations of the Respondent. Thus, the request of the petitioner under the present head is not maintainable.

Issue no. 4 -Refund of bill amounting for 2 months from 11.03.2013 to 10.05.2013-

As per decision of the WTD dated 10.11.2016, which has been duly upheld by this Hon'ble Commission in the impugned order, the Petitioner was sanctioned refund for bill amount from 26.04.2013 to 10.05.2013. However, the factory was running prior to dis-connection. Petitioner was sanctioned seasonal TDCO w.e.f. 29.04.2013. However, before availing the same, the petitioner requested for dis-

connection. There was no request for dis-connection prior thereto. Hence, bill was generated based on fixed charges for the period 11.03.2013 to 25.04.2013. The same is payable in accordance with the regulations of the Respondent. Thus, the request of the petitioner under the present head is liable to be rejected.

Issue no. 5 – Payment of Interest @ 18% on connection security deposited by the Petitioner–

As per instructions of the Respondent, the then prevailing interest was paid to the Petitioner on the security amount uptill 10.05.2013. The same was duly adjusted in the bills of the Petitioner for every financial year. The Petitioner cannot claim exorbitant interest against the instructions of the Respondent. Since, the connection was disconnected on 10.05.2013, no interest subsequent to that date is payable to the Petitioner.

Thus, the request of the petitioner under the present head is liable to be rejected.

4. Commission’s Analysis and Orders:

4.1 The matter was heard on 18.12.2019, as scheduled. The Petitioner Sh. Tej Ram vide his letter dated 09.11.2019 has shown his inability to be present personally on the date of hearing due to his health problems and prayed to hear the case in his absence.

4.2 During hearing, Smt. Sonia Madan, Advocate for the Respondent reiterated the submissions made in their reply.

4.3 As per Regulation 57 (1) of *Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2019* all relevant provisions relating to review of the decisions, directions and orders as provided in the Code of Civil Procedure 1908, shall apply for review of the decisions, directions and Order of the Commission, as follows:

“Review of the decisions, directions, and orders

57 (1) All relevant provisions relating to review of the decisions, directions and orders as provided in the Code of Civil Procedure 1908, as amended from time to time, shall apply mutatis mutandi for review of the decisions, directions and order of the Commission.”

4.4 The Order XLVII – Review as mandated under Code of Civil Procedure 1908 is as follows:

“ORDER XLVII-REVIEW

1. Application for review of judgment— (1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.”

4.5 Accordingly, the Commission has analyzed the present Review Petition and finds no error apparent on the face of the record in appreciation of evidence or findings of the Order dated 18/06/2019. None of the grounds raised in the review petition call for a review.

4.6 In view of above, this Review Petition is untenable and therefore dismissed.

This Order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 18/12/2019.

Date: 18.12.2019

(Naresh Sardana)

(Pravindra Singh)

(D.S. Dhesi)

Place: Panchkula

Member

Member

Chairman