

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

**REVIEW PETITION 3 OF 2015 & IA NO.12 OF 2015
REVIEW PETITION 4 OF 2015 & IA NO.13 OF 2015
IN
APPEAL NO.317 OF 2013**

Dated : 30th March, 2015

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member**

REVIEW PETITION 3 OF 2015 & IA NO.12 OF 2015

In the matter of :

**Odisha Power Transmission Corporation Limited
Janpath, Bhubaneswar,
Dist. Khurda, Odisha.**

.....Petitioner

Versus

- 1. T.S. Alloys Limited
N-3/24, Nayapalli,
Bhubaneswar,
Dist. Khurda, Odisha.**
- 2. Odisha Electricity Regulatory Commission,
Bidyut Niyamak Bhgawan – Unit-VIII,
Bhubaneswar, Odisha.**
- 3. Grid Corporation of Odisha Limited,
Janpath, Bhubaneswar,
Dist. Khurda, Odisha.**
- 4. Central Electricity Supply Utility of Odisha,
2nd Floor, IDCO Tower,
Janpath, Bhubaneswar, Odisha.**

.....Respondents

REVIEW PETITION 4 OF 2015 & IA NO.13 OF 2015

**Central Electricity Supply Utility of Odisha,
2nd Floor, IDCO Tower,
Janpath, Bhubaneswar, Odisha**

.....Petitioner

Versus

- 1. T.S. Alloys Limited,
N-3/24, Nayapalli,
Bhubaneswar, Odisha**
- 2. Odisha Electricity Regulatory Commission,
Bidyut Niyamak Bhawan – Unit-VIII
Bhubaneswar, Odisha.**
- 3. Odisha Power Transmission Corporation Limited,
Janpath, Bhubaneswar, Odisha.**
- 4. Grid Corporation of Odisha Limited,
Janpath, Bhubaneswar,
Dist. Khurda, Odisha.**

.....Respondents

Counsel for the Petitioner(s) : Mr. R.K. Mehta
Mr. Elangbam
Mr. Abhishek Upadhyay
Mr. L.N. Mahapatra

Counsel for the Respondent(s) : Mr. Ashok K. Parija, Sr. Adv.
Mr. R.M. Patnaik
Mr. P.P. Mohanty
Mr. Rutwik Panda
Ms. Anshu Malik
Ms. Ankita
Mr. Parshanto Sen

ORDER

These Petitions have been filed seeking review of Judgment of this Tribunal dated 29.11.2014 in Appeal No. 317 of 2013. Review Petition No.3 of 2015 has been filed by Orissa Power Transmission Corporation Limited (“OPTCL”), the

transmission licensee and Review Petition No. 4 of 2015 by Central Electricity Supply Utility of Odisha Limited (“CESU”), the distribution licensee. By the impugned Judgment, this Tribunal set aside the order dated 01.08.2013 passed by the State Commission as it had not only failed to pass the consequential order pursuant to the directions given by this Tribunal in judgment dated 14.12.2012 in Appeal No. 30 of 2012 and judgment dated 21.12.2012 in Appeal No. 94 of 2011 but also decided contrary to the findings of the Tribunal. The Tribunal also held that the Respondent No.1 herein is entitled to following reliefs:

- a) Refund of Supervision Charges Rs.1,14,35,295/- along with interest;
- b) Refund of Rs.6,04,08,260.00 towards construction of transmission line (inter state), switching station etc., as the scheme is highly remunerative along with interest;
- c) Refund of interest on the amount of Rs.1.50 crores deposited towards Infrastructure Loan.

The Tribunal also directed the contesting Respondents therein to refund the amount to the Respondent No.1 herein within one month from the date of the Judgment along with simple interest calculated @ 10% per annum.

2. OPTCL, the Review Petitioner in Petition No.3 of 2015, has made the following submissions:-

- a) The submissions of the Petitioners contained in the comprehensive written submissions and argued during hearing of the Appeal No. 317 of 2013 have not been taken into consideration.

- b) The Tribunal without even dealing with much less considering any of its submission has directed the Petitioner to make payment amounting to about Rs.7.18 crores besides interest on the refund amount to Rs.1.50 crore towards the infrastructure loan, within one month. The Tribunal has not given any reason in support of this said direction for payment amounting to Rs.7.18 crore besides interest on the refund amount of Rs.1.5 crores towards infrastructure loan.
- c) The claim of Rs.7.18 crore was raised for the first time by the Respondent No.1 in the comprehensive written submissions and the Petitioner did not have any opportunity to respond to the said claim.
- d) Although in Judgment dated 14.12.2012, the Tribunal did not accept submissions of OPTCL with regard to rate of supervision charges, it also did not disturb the findings of the Commission that 6% supervision charges will apply on and after the order dated 26.04.2011 and past cases will not be reopened.
- e) Therefore, the Appellant is not entitled to refund of supervision charges in excess of 6%.
- f) By judgment dated 14.12.2012, the Tribunal has held that the remunerative principles in respect of last mile connection i.e. line connecting the transmission network of OPTCL and consumes premises, would apply to the Appellant through distribution licensee only. In view of this, all the observations of the State Commission in regard to remunerative principles stand superseded by the observations of the

Tribunal in Judgment dated 14.12.2012. The Respondent No.1 had not filed any supporting document to prove that it had actually incurred the expenditure of Rs.6,04,08,260/- claimed by it. Therefore, the Appellant is not entitled to reimbursement of the cost of LILO Line, sub-station, switching station, etc.

- g) In the comprehensive written submissions, Review Petitioner had given detailed reasons that the Respondent No.1 is not entitled for interest in respect of infrastructure loan. In the application filed by the Respondent No.1 before the Commission in case No. 63 of 2006 which gave rise to Appeal No.94 of 2011 the Respondent No.1 did not plead or make any prayer for payment of interest.

3. CESU, the Review Petitioner in R.P. No.4 of 2015 has submitted as under:-

- (a) The submissions of the Petitioner in written submission/comprehensive written submissions and argued during the hearing of the Appeal No.317 of 2013 have not been taken into consideration.
- (b) It is wrongly stated in the Judgment dated 17.10.2017 that there was no response by the Petitioner to the letter dated 28.08.2013 requesting for compliance of directions of the Judgment dated 14.12.2012 and 21.12.2012. As a matter of fact, the Review Petitioner had sent a reply to the Respondent No.1 stating that there is no privity of contract between the Petitioner and the Respondent No.1 and as such it cannot entertain any request from the Respondent No.1 herein for remunerative calculation.

- (c) The Tribunal has not given any reason in support of the directions for payment of Rs.7.18 crores besides interest on the refund amount of Rs.1.50 crore.
- (d) In the present case, there is no such line which attributes last mile connectivity i.e. line between delivery point on the transmission system and the point of connection to the Respondent No.1 because the switching station situated adjacent to the Respondent No.1 belongs to OPTCL as per connectivity permission. Therefore, the question of remunerative calculation by the Review Petitioner does not arise in the present case.
4. Thus, the Review Petitioners have sought the review of the Judgment due to non-consideration of submissions made by them. On the above lines, we have heard Shri R.K. Mehta, Learned Counsel for the Review Petitioners and Shri Ashok K. Parija, Learned Sr. Advocate for the Respondent No.1.
5. Shri Parija, Learned, Sr. Advocate for Respondent No.1 has argued that the Review Petitioners have sought rehearing of the matter afresh and the Review Petition is an Appeal in disguise.
6. We have considered the submission made by the Learned Counsels for the parties and also perused the comprehensive written submissions filed by the parties in Appeal No. 317 of 2013.
7. The Appeal No. 317 of 20013 was filed by the Respondent No.1 herein against the order dated 01.08.2013 passed by State Commission in which it failed to pass the consequential orders on its application as per the findings of this Tribunal in Judgment in Appeal No. 30 of 2012 and Appeal No. 94 of 2011. In

the Judgment in Appeal No. 94 of 2011, this Tribunal had given a clear finding that OPTCL had violated the State Commission's order dated 22.07.2006 by demanding the infrastructure loan from the Respondent No.1 and also agreeing to pay interest on this loan at 6% instead of bank rate of 9% to 10%. There was also a clear finding that OPTCL was entitled to charge supervision charges from the Respondent No.1 herein only at 6% and not 16% and OPTCL ought to have collected supervision charges of 6%. It was held that OPTCL had violated the State Commission's order by charging 16% supervision charges. In light of these findings, the State Commission was directed to pass consequential order.

8. In Appeal No.30 of 2012, this Tribunal had given a clear finding that the last mile connection belongs to the Distribution Licensee and accordingly remunerative principles would apply to it through distribution licensee only.
9. When the Respondent No.1 approached the State Commission to pass consequential order with regard to refund of supervision charges, interest on infrastructure loan and remunerative calculations for refund of expenditure incurred on transmission line, switching sub-station, etc., the State Commission instead of passing consequential order decided the matter contrary to the findings of this Tribunal.
10. Let us examine the contention of the Review Petitioners that their submissions in comprehensive written submissions were not considered by the Tribunal in the impugned judgment.
11. We find that the comprehensive submissions were submitted by the Respondent No.1 on 16.10.2014 and the Review Petitioners on 20.10.2014 in Appeal No. 317

of 2013. The Review Petitioners in their written submissions have made reference to the written submissions of the Respondent No.1

12. On the issue of supervision charges in excess of 6%, OPTCL, the Review Petitioner had argued in comprehensive written submissions in Appeal No. 317 of 2013 that supervision charges at the rate of 16% would be applicable to the Respondent No.1 contrary to the findings of this Tribunal in judgment dated 21.10.2012 in Appeal No. 94 of 2011. The Review Petitioner also gave rulings in support of his arguments. Thus, the Review Petitioner had argued against the rulings of this Tribunal in Appeal No. 94 of 2011 in which the State Commission had been directed to pass consequential order and the failure of the State Commission to pass the consequential order was the matter under challenge in Appeal No. 317 of 2013. Therefore, it was not open to the Respondent no.1 to reargue the case in Appeal No. 317 of 2013 which had already been decided in Appeal No. 94 of 2011. Therefore, the submissions of the Review Petitioner on this issue in Appeal No. 317 of 2013 did not need any consideration.
13. On the amount of supervision charges, the Respondent No.1 herein in the comprehensive written submissions dated 16.10.2014 had claimed refund of Rs.1,14,35,295/- along with interest. The Review Petitioner in its written submissions did not indicate any amount which would be due to be refunded to the Respondent no.1 on account of difference in supervision charge from 16% to 6%. In the Review Petition also the Review Petitioner has only indicated that the claim by the Respondent No. 1 was incorrect but has not indicated the amount to be refunded according to its calculation. The Review Petitioner has charged

supervision charges on the capital cost of the line, switching sub-station, etc., constructed by the Respondent No.1 at the rate of 16%. Thus, calculation of the amount due as per the Tribunal's judgment at 6% and the amount to be refunded to the Respondent No.1 is a simple mathematical calculation. Despite this the Respondent No. 1 has not given a counter figure but has only indicated that the amount claimed by the Respondent No.1 is not correct. The Tribunal in the impugned judgment in the absence of any counter calculation by the OPTCL had only accepted the amount claimed by the Respondent No.1.

14. On the issue of refund of infrastructure loan and interest thereon, OPTC in their comprehensive written submissions had given justification for not refunding interest and infrastructure loan when the matter was decided against them in Appeal No. 94 of 2011. OPTCL had referred to their decision of Board of Directors and to state that the Respondent No.1 is not entitled to interest in terms of their Board decision dated 02.12.2011 and also reargued their case that infrastructure loan was given voluntarily. This issue had already been decided in Appeal No. 94 of 2011 by Judgment dated 21.12.2011 against the Review Petitioner. In Appeal No. 317 of 2013 the OPTCL had reargued its case which had already been decided and therefore their submissions did not need any consideration.
15. On the issue of refund of amount incurred by the Respondent No.1 towards construction of transmission line along with interest, the Respondent no.1 in their written submissions dated 16.10.2014 had claimed refund of a sum of Rs.6,04,08,260/- on the ground that the scheme for power supply to the

Appellant through LILO arrangement which had been technically approved by OPTCL had been highly remunerative.

16. In their comprehensive written submissions filed on 20.10.2014, OPTCL had referred to the said amount of refund of 6.04 crores as claimed by the Respondent No.1 to say that the remunerative principle stands superseded by the observation of the Tribunal in Judgment dated 14.12.2012 and that the Respondent No.1 was not entitled to claim the cost of LILO lines, sub-station, switching station etc. On the other hand CESU, the Review Petitioner in Review Petition No. 4 of 2015 in their comprehensive written submissions had stated that the Respondent No.1 had made request to them for refund of a sum of Rs. 6,04,08,260/- purportedly on the ground that the scheme for power supply to the Appellant through LILO arrangement which had been technically approved by OPTCL was highly remunerative. The Review Petitioner CESU by letter dated 16.1.2013 sent a reply to the Respondent No.1 stating that there is no privity of contract between the Respondent No.1 and CESU and as such it could not entertain any request from the Respondent no.1 for remunerative calculation. CESU in their comprehensive written submissions also submitted that in the present case there is no such line that attributes last mile connectivity that is that the line between delivery point of the transmission system and the point of connection to the Respondent No.1 because the switching station situated adjacent to the consumer's premises belongs to the OPTCL as per connectivity permission. Therefore, the question of any remunerative calculation by CESU would not arise in the present case.

17. In view of above submissions, there was no need to carry out a remunerative calculation and, therefore, the Tribunal allowed the relief claimed by the Respondent No.1 for refund of 6,04,08,260/- incurred by them towards construction of LILO line, switching station etc. The concerned line and switching station, etc., constructed by the Respondent No.1 at its expenses have already been handed over to OPTCL and are already under the control of OPTCL.
18. We find from the written submissions of the Review Petitioners that all along the proceeding in Appeal No. 317 of 2013, the attempt of the Review Petitioners was to contest the findings of this Tribunal in earlier Judgments in Appeals 94 of 2011 and 30 of 2012 and not to assist in implementation of these Judgments. The State Commission had not implemented the earlier Judgments of this Tribunal. As indicated in the Judgment dated 29.11.2014, the State Commission had not been complying with the decisions of this Tribunal in the past for which the Tribunal had expressed its displeasure extensively by passing strictures over the conduct of the State Commission in the Judgment dated 29.11.2014. Neither CESU nor OPTCL had raised any issue regarding the verification of the amount claimed by the Respondent No.1. Therefore, the Tribunal accepted the amount claimed by the Respondent No.1.
19. In the Review Petitions, OPTCL has now stated that no supporting documents have been filed by the Respondent No.1 to prove that an amount of Rs.6,04,08,260/- had been actually incurred by the Respondent No.1 towards construction of line, switching station, etc. To be fair to the Review Petitioner, we direct the Respondent No.1 to submit details of the expenditure incurred on the

construction of line, switching station, etc., and the amount claimed by them duly certified by their Auditors to OPTCL for its record.

20. In view of above we do not find any merit in the submissions of the Review Petitioners that their submissions were not considered before passing the impugned judgment in Appeal No. 317 of 2013. We feel that in the garb of Review Petition the Review Petitioners have reargued their case which had already been decided by this Tribunal in Appeal No. 94 of 2011 and 30 of 2012.
21. In view of above, we do not find any merit in the above Review Petitions. Accordingly, the Review Petitions are dismissed.
22. Having decided the above Review Petitions, one typographical error has come to our notice in the Judgment dated 29.11.2014. In consequential orders passed under paragraph 33 of the Judgment in sub-para (b) “(inter-State)” needs to be replaced by “(intra-State)”. This sub-para (b) shall be read as under:
- “(b) Refund of Rs.6,04,08,260/- towards construction of transmission line (intra-State), switching station, etc., as the scheme is highly remunerative along with interest.”
- Registry is directed to make necessary correction in the Judgment.
23. Pronounced in the open court on this **30th day of March, 2015.**

(Rakesh Nath)
Technical Member

(Justice Ranjana P. Desai)
Chairperson

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