

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SITE NO. 3, BLOCK B, SECTOR 18-A MADHYA MARG, CHANDIGARH**

**Review Petition No. 04 of 2019 in
Petition No.01 of 2018
Date of Order:30.09.2019**

Present: Ms. Kusumjit Sidhu, Chairperson
Sh. S.S. Sarna, Member
Ms. Anjali Chandra, Member

Review Petition under Section 94 of the Electricity Act read with Regulation 64 of the Conduct of Business Regulations seeking review of the Order dated 27.05.2019 passed by the Hon'ble Commission in petition No. 01 of 2018.

AND

In the matter of: Punjab State Power Corporation Limited, The Mall,
Patiala.

Review Petitioner

Versus

GVK Power (Goindwal Sahib) Limited, Paigah House,
156-159 Sardar Patel Road, Secunderabad- 540003

Respondent

ORDER

The present review petition filed by PSPCL seeking review of the Order dated 27.05.2019 passed in Petition No. 01 of 2018. GVK Power (Goindwal Sahib) Limited filed Petition No. 01 of 2018 for carrying out amendments to the Amended and Re-stated Power Purchase Agreement dated 25.06.2009 of 2X270 MW Goindwal Sahib Coal Based Thermal Power Plant. PSPCL has submitted this review petition in a

limited issue, in relation to the following observation made by the Commission in the said Order dated 27.05.2019:

*“Considering the above, the Commission is of the opinion that the basic price of the coal and other charges/costs included in the coal bills of the coal company have to be compulsorily paid in full by the procurer of coal who incidentally has no control over it, be it PSPCL or GVK. **Therefore, the Commission holds that in respect of the coal received under the SHAKTI Scheme, the coal cost for the purpose of calculating the monthly energy charges shall be the cost of coal as per the bill raised by the coal company including all the statutory charges/taxes/duties/ cess, surface transportation (upto the delivery point located within the mine) etc. billed in the coal bill issued by the coal company to GVK.** Further, the actual transportation charges paid to Indian Railways shall be considered for calculating the monthly energy charges. As regards the surface transportation charges (external), in case the railway siding is away from the delivery point of coal located within the mine [upto which the surface transportation charges (internal) are included in the bill of the coal company], the Commission has already decided the same in its Order dated 06.03.2019 in petition no. 68 of 2017.....”*

2. PSPCL has submitted the review petition on the following grounds:
 - i) That there is an error apparent on the face of record, to the extent the Commission has dealt with the cost of coal to be paid as a part of the energy charges by PSPCL to GVK.
 - ii) The prayers in the petition filed by GVK were only for amendment of the PPA and not seeking any determination of tariff by the Commission.

iii) There was no occasion to go into the issue of energy charges or tariff in these proceedings, much less vary or amend the terms of the previous Order dated 01.02.2016 passed in Petition No. 65 of 2013 and Petition No. 33 of 2015 wherein the Commission specified the terms on which the coal cost is to be paid by PSPCL to GVK. The observation of the Commission being beyond the prayers made and the scope of the petition filed, the same would amount to an error apparent on the face of the record.

iv) The allocation of coal under SHAKTI Scheme was pursuant to the discount offered by GVK to the procurer in the tariff and can by no means be used to increase the tariff to the procurer. The Supplementary Agreement dated 01.02.2018 to capture the SHAKTI Scheme clearly recorded that this approval and coal linkage would in no manner be used for claiming any higher tariff by GVK. The sole purpose of the agreement was for passing on of the discount. It is not correct to modify the terms of an earlier Order (dated 01.02.2016) in the present proceedings. The said Order is not challenged by GVK and has attained finality qua GVK.

3. In view of the above PSPCL has prayed as under:-

(a) Allow the present review petition and set aside the impugned order dated 27.05.2019 passed in petition No. 01 of 2018 of the extent challenged in the present review petition (quoted in para 2 above).

(b) Pass such other further order(s) as the Commission may deem just in the facts of the present case.

The review petition was taken up on 11.09.2019 for hearing on admission. After hearing both the parties Order was reserved vide order dated 13.09.2019.

4. Observations, Findings and Decision

The Commission does not find any merit in the submissions of PSPCL in the review petition. The Order of 01.02.2016 is an interim measure till long term coal arrangements for coal for the project are made by GVK. Coal arranged by GVK under SHAKTI Scheme is one such long term arrangement made by GVK. SHAKTI Scheme 2017 with its various terms and conditions, as also brought out briefly in the Order for which review has been sought, was issued by Ministry of Coal, Govt. of India. To deliberate and decide upon the same and the extent to which the cost of coal to be supplied against the SHAKTI Scheme as per relevant regulations of the Commission would be a pass through, is a prerogative of the Commission. Order passed by the Commission is well within the prayers made by GVK, wherein GVK sought approval for procurement of coal under SHAKTI Scheme 2017 as also any such other and further relief the Commission deems just and proper in the nature and circumstances of the case. Moreover, as per Clause 5 of the Supplementary Agreement for approval of SHAKTI Scheme, energy charges would be payable to GVK under the provisions of the PPA and the relevant Orders of the PSERC, which as interpreted by the Commission, would mean to include this Order as well for which review has been sought and any subsequent Order(s) on this issue. A review under Regulation 64 of the Punjab State Electricity Regulatory Commission (Conduct of

Business) Regulations, 2005, can be allowed on the following grounds:

(i) discovery of new and important matter of evidence which after the exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or order was made,

or

(ii) some mistake or error apparent on the face of the record,

or

(iii) for any other sufficient reason.

PSPCL has rested its case on the second alternative i.e. error apparent on the face of record. The Commission is not convinced of the submissions of PSPCL that it is a case for review of its earlier decision on this ground. Rather the Commission is of the view that PSPCL is not seeking a review but an amendment of the Order. The power of review is not to be confused with powers of an Appellate Court, which on an appeal filed by the aggrieved party, may re-examine and modify/reject the decision of the subordinate court. Whereas the power of review may be exercised on the grounds brought out above, it cannot be exercised on the ground that the decision was erroneous on merits. That would be a prerogative of Court of Appeal. There is a distinction between an erroneous decision and a decision which could be characterized as vitiated by 'error apparent'. A review cannot be an appeal in disguise, whereby the decision of the subordinate court may be modified/rejected. A perusal of the review petition reveals that PSPCL has in fact challenged the decision of the Commission on

the grounds that the decision is erroneous. The same cannot be said to be satisfying the grounds on which the review can be allowed or is permissible. In case an aggrieved party feels that an order or decision is wrong or erroneous, the same can be challenged only in Appeal.

The Commission had passed a detailed and reasoned Order after considering all submissions, pleadings, record and arguments of the parties after discussing all the points and the same needs no reconsideration in this review, as facts and evidence remains the same and no error is apparent on the face of record and therefore, there is no reason for reviewing the Order. Further, it is pertinent to note that the said Order dated 27.05.2019 in petition no. 01 of 2018 for which review has been sought by PSPCL herein has been challenged by GVK before Hon'ble Appellate Tribunal for Electricity in DFR no.2202 of 2019 which stands admitted vide Order dated 05.09.2019, though the grounds therein may be different.

Considering the above, the review petition is not admissible and hence dismissed.

Sd/-

(Anjuli Chandra)
Member

Sd/-

(S.S. Sarna)
Member

Sd/-

(Kusumjit Sidhu)
Chairperson

Chandigarh

Dated: 30.09.2019