



Chhattisgarh State Electricity Regulatory Commission

Civil Lines, G.E. Road, Raipur – 492001

Tel: 0771-5073555, Fax-5073553

Petition No. 18/2005 (M)

M/s Ultra-Tech Cement Ltd.....Petitioner

V/s

Chhattisgarh State Electricity Regulatory Respondents

ORDER

(Passed on 25.08.2005)

M/s UltraTech Cement Ltd., Raipur, a company manufacturing cement and a consumer of electricity of the Chhattisgarh State Electricity Board (CSEB) has filed an application under section 94(1)(f) of the Electricity Act, 2003 (the Act, for short) read with clause 43 of the CSERC (Conduct of Business) Regulations, 2004 (Business Regulations, for short) for review of the tariff order passed by the Commission on 15.06.05 in petition No.5 of 2005.

2. The petitioner was heard regarding the admissibility of this petition on 05.08.05. A number of issues relating to the tariff order of the Commission aforementioned have been raised in the petition. These include a plea for recall of the tariff order dated 15.06.05 and the plea that since the tariff petition filed by the CSEB was not accompanied with reliable data and supporting documents the Commission should direct the petitioner to file a fresh application. The petitioner also prays for re-notifying the additional filings made in the case by the respondent for inviting objections. Alternatively, it seeks benchmarking of T&D losses by the Commission, refixation of CD charges, re-determination of reasonable return etc., apart from certain specific reliefs which directly concern the petitioner, such as extending TOD tariff to him, withdrawal of parallel operation charges etc. Prima facie the above are grounds on which an appeal should appropriately be preferred before the Appellate Tribunal, which has since been established, under section 111(1) of the Act. The case is not one of review.

3. The review application has been preferred under section 94(1)(f) of the Act under which the Commission has the power of reviewing its decisions, directions and orders, and in this regard has the same powers as are vested in a Civil Court under Code of Civil Procedure, 1908. Shri G.Pujari, learned counsel for the petitioner, during argument mainly relied on clause 48(1) of the business regulations, which reads: *"The Commission may on its own motion, or on the application of any person or parties concerned, within 90 days of any decision, direction or order, review such decision, directions or orders and pass such orders as it considers appropriate"*.

It has been argued that this provision is wide in scope and the Commission may review any of its orders or decisions under the provision including the impugned tariff order.

4. The Commission does not agree with the pleas of the petitioner for the reasons given below.

5. Although the Business Regulations have a general provision for review of orders of the Commission, there is a specific provision for review of tariff order in the CSERC (Details to be furnished by licensee or generating company for determination of tariff and manner of making

application) Regulations, 2004 (Tariff Regulations, for short). Clause 33 of the above regulations provides as under:

"A petition for review of tariff can be admitted by the Commission in the following conditions -

(a) the review petition is filed within sixty days from the date of the tariff order; and

(b) there is an error apparent on the face of the record."

The petitioner has not brought any apparent error in the tariff order of the Commission dated 15.06.05. The Commission is of the view that the specific provision regarding review of a tariff order in a set of regulations framed by the Commission shall prevail over the general provision in the Business Regulations.

6. Even otherwise, under section 94(1) of the Act the Commission has the same power for review of its orders as are vested in a Civil Court under the Code of Civil Procedure. Order 47 of the Rules under the Civil Procedure Code lays down the ground on which a review application may be made. The order states that *"a person may prefer a review application on the basis of the discovery of new and important matter or evidence which after the exercise of due course was not within his knowledge or could not be produced by him at the time when the order was made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason"*.

The provision made in clause 33 of the tariff regulations is in conformity with the above provision. The pleas of the applicant do not fall in the category of there being an error apparent on the face of the record. He has raised substantive and procedural issues regarding the tariff order of the Commission.

7. The Commission would like to mention that it has examined the impact of tariff revision on the petitioner. On the basis of information received from the CSEB, a copy of which has been given to the applicant, we find that the increase in tariff revision is about 5% which can not said to be excessive since tariff is being revised after March 1999, after a period of six years. It is also observed that the contract demand of the consumer is 23000KVA while his MD has been in the range of 13000 to 16000 KVA. Thus the applicant has sufficient scope to reduce his contract demand which will further reduce the impact of increase of tariff on him.

8. In view of the above, the review application is clearly not tenable and is, therefore, rejected at the stage of admission. It is open to the applicant to prefer an appeal against the order of the Commission if he so desires.

Sd/-
Member

Sd/-
Chairman

True Copy

(Ajay Srivastava)
Deputy Secretary