



TELANGANA ELECTRICITY REGULATORY COMMISSION
'Vidyut Niyantran Bhavan', G.T.S. Colony, Kalyan Nagar, Hyderabad 500 045

R. P. No. 3 of 2024

in

O. P. No. 2 of 2024

Dated 18.10.2024

Present

Sri. T. Sriranga Rao, Chairman
Sri. M. D. Manohar Raju, Member (Technical)
Sri. Bandaru Krishnaiah, Member (Finance)

Between.

M/s Transmission Corporation of Telangana Limited.

...Petitioner

AND

Nil

...Respondents

This petition came up for hearing on 09.09.2024. Sri T. Durga Prasad, Divisional Engineer / Sub-stations along with Mrs. B. Kavitha, Assistant Divisional Engineer / Sub-stations for petitioner appeared in the above matter. The petition having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s. Transmission Corporation of Telangana Limited (TGTRANSCO) (review petitioner) has filed a review petition under Section 94(1)(f) of the Electricity Act, 2003 (Act, 2003) seeking review of order dated 07.06.2024 in O.P.No.2 of 2024 in the matter of Annual Performance Review (APR) for FY 2022-23 of transmission business of TGTRANSCO. The averments in the petition extracted below:

- a. It is stated that the review petitioner had filed Annual Performance Review (APR) towards true up of transmission business for FY 2022-23 on 30.12.2023 in compliance with new directive No.3 of 4th MYT control period (that is from

FY 2019-20 to FY 2023-24) with a revenue surplus of Rs.252.33 crore. The same was taken on file as O.P.No.2 of 2024.

- b. It is stated that the Commission has passed APO for FY 2022-23 on 07.06 2024 in the above O.P. in respect of transmission business and approved revenue surplus of Rs.579.05 crore as against revenue surplus of Rs.252.33 crore filed by the review petitioner based on audited values of FY 2022-23.
- c. It is stated that the Commission while passing APR order for FY 2022-23 disallowed the entire amount in respect of tax on income on the return on equity observing as –

"The commission has observed that the actual income tax paid for FY 2022-23 is nil for current year as per audited account for FY 2022-23. Therefore, the Commission has considered tax on income as nil in accordance to clause 16.2 of the above said regulation. The tax on income claimed by the petitioner and approved by the Commission for FY 2022-23 is as shown in the table below: -

| Particulars | Approved in the MYT Order APR dated 20.03.2020 | Claimed in Apr | Approved |
|--------------------|---|-----------------------|-----------------|
| Tax on Income | 104.28 | 81.94 | 0.00 |

- d. It is stated that the review petitioner preferred this review petition on the following grounds

(i) *Clause 16 of the Regulation No.5 of 2005 which deals with Tax on Income reads as under:*

"16. Taxes on Income

16.1 Taxes on Income, if any, on the income stream of the licensed business of the Transmission Licensee shall be treated as an expense and shall be recoverable through ARR.

16.2 Taxes on income actually payable and paid shall be included in the ARR, limited, however, to tax on Return on Equity component of the Return on Capital Employed, and excluding tax on profit, if any, of excess of such return "(arising out of any reason, including efficiency of the Transmission Licensee or any explicit incentive provided in the ARR), penalties, interest on delayed payment of tax etc., and duly adjusted for any refunds, etc., received for the previous periods.

16.3 Tax incidence on income arising out of true-up of cost adjustments of previous year(s) due to un-controllable factors shall also be considered as pass-through, on actual basis, provided the tax so claimed and that already allowed for the year(s) which the true-up relates does not exceed the overall ceiling specified in clause 16.2 adjusted against the tax already provided in the previous year(s)."

- (ii) *By considering above, this Commission has observed that the actual income tax paid for FY 2022-23 is nil for current year as per audited accounts for FY 2022-23. Therefore, the Commission has considered tax on Income as nil in accordance to clause 16.2 of the above said regulation.*
- (iii) *During the financial year 2022-23 the review petitioner has paid tax of Rs.41,11,82,472/- as per income tax return under Section 115JB of Income Tax Act 1961 (Act, 1961) under minimum alternative tax (MAT) provisions and the same shall be available for adjustment against the tax payable in the future years. As such the same was accounted as MAT asset in the books of review petitioner, Resultantly, provision for taxes had to be shown as nil in profit and loss statement of the review petitioner.*
- (iv) *The review petitioner further stated the following documents in proof of payment of Income tax (a) ITR filing for FY 2022-23 showing the tax payable and paid for the year (b) Advance tax payment challans 2 no. and (c) Form 26AS showing the TDS amount during the year.*
- (v) *The review petitioner submits that the aforementioned documents could not be submitted under bonafide impression that this Commission would take the tax on RoE component based on the equity component of the RRB and the MAT rate into consideration.*
- (vi) *That the Commission ought to have calculated the tax on RoE component for FY 2022-23 based on the equity component of the RRB and the MAT rate.*
- (vii) *The Commission ought to have allowed the tax on income allowable in ARR in accordance with the provisions of the Regulation No.5 of 2005 and should have approved the claim of 81.94 Crores.*
- (viii) *That the Commission omitted to take into consideration the material fact of payment of tax of Rs.41,11,82,472/- as per income tax return under Section 115JB of Act, 1961 under MAT provisions and its adjustment against the tax payable in the future years and as a result of which provision for taxes came to be shown as nil in profit and loss statement of the review petitioner.*
- (ix) *The review petitioner stated that because of the aforementioned omission of consideration of material fact which is apparent on the face of record, the Commission came to a different conclusion. Thus, there is a mistake apparent on the face of record.*

2. The review petitioner has sought the following prayer in the review petition.

To allow the review petition by granting/approving the claimed amount of Rs.81.94 crore towards claim in APR by reviewing the order at paragraph 4.93 and table 4.9 of the order in O.P.No.2 of 2024 dated 07.06.2024.

3. The Commission has heard the representatives of the review petitioner and also considered the material available on record including the original order passed by it. The submissions made on the date of hearing are abstracted below:

Record of proceedings dated 09.09.2024

“... .. The representatives of the petitioner explained the issue involved in the review petition. It is their case that income tax as paid by them is not taken into account while deciding the annual performance petition by the Commission. Infact, the petitioner has filed income details but did not highlight the aspect. Moreover, the petitioner had paid minimum alternate tax under Section 115JB of the Income Tax Act, 1961. The said figure has to be taken into account in the annual performance review and consider the revised figures for approval. The representatives of the respondent state that they have filed a counter affidavit considering the said aspect. In view of the submission of the party the matter is reserved.”

4. The review petitioner relied on the provisions in the then subsisting regulation to emphasise the incidents of tax is treated as an expense and is recoverable through the ARR. It is the case of the review petitioner that the Commission has considered the tax as NIL for FY 2022-23 which is contrary to the facts borne on record. It is also the case of the review petitioner that the profit and loss account did not reflect the payment due to the understanding of the provisions under the Act, 1961.

5. The Commission is of the view that material available at the disposal of the review petitioner ought to have been placed before it while filing the annual performance review for FY 2022-23. Though it is stated that inadvertently and under bonafide impression the Commission would take into account tax on ROE and would be considered on equity component of RRB, the review petitioner cannot assume or presume about the view being taken or not by the Commission. Further assuming that such an understanding may be a fair understanding on the part of the petitioner, however, when performance review is sought to be undertaken by the Commission, whatever financial changes that have occurred or would have occurred in respect of the financial year under review ought to have been placed at the disposal of the Commission for consideration. Such material facts whether they constitute any effective aspect of finances or not should be left to the Commission which could have got considered at the time of APR and while passing the order on the same.

6. It is appropriate to state that when the regulatory exercise of performance review is being undertaken, it is but the responsibility of the review petitioner to emphasise and canvass the material financial aspects which where hitherto not under consideration while determining the tariff for the control period and these financial

event would not be known to the regulator as it is not privy to the day to day functioning of the review petitioner.

7. At this stage it is relevant to notice the ingredients of review under the Code of Civil Procedure which are provided under Section 94(1)(f) of the Act. The review petitioner has not been able to show as to the following aspects for undertaking a review of the order.

- a. Where there is a typographical mistake that has crept in the order;
- b. When there is an arithmetical mistake that has crept in while effecting calculation or otherwise;
- c. When there is a mistake committed by the Commission, which is apparent from the material facts available on record and/or in respect of application of law;
- d. When the Commission omitted to take into consideration certain material facts on record and 'law on the subject' and that if on taking into consideration those aspects, there is a possibility of Commission coming to a different conclusion contrary to the findings given;
- e. If the aggrieved party produced new material which he could not produce during the enquiry in spite of his best efforts and had that material or evidence been available, the Commission could have come to a different conclusion;

8. The Commission does not find any infirmity in the order passed by it nor it calls for interference by way of review. None of the ingredients of reviewing an order as set out in Order 47 of Civil Procedure Code, 1908 have been satisfied. In this case the review petitioner while presenting the original petition and making submissions thereof had sought to presume and assume that its activities with reference to payment of tax are within the knowledge of the Commission and as such it escaped the attention of the Commission for being considered. Such understanding appears to be an afterthought and not borne on record, having failed to place the required information before the Commission in a timely manner as stated and recorded supra.

9. In view of the failure to satisfy the ingredients of review, the Commission is constrained not to entertain the review petition even though and assuming that there was a bonafide impression on part of the review petitioner that the taxation payments would get considered in the order on APR without the details being filed before the Commission.

10. It is also worth mentioning that the review petitioner stated that it had paid an amount of Rs.41,11,83,472/- towards MAT under Section 115(J)(B) of the Act, 1961 and mentioned an amount of Rs.81.94 crore as claimed in the original petition on APR. This also shows the laxity in clearly identifying the correct figure which is required to be considered by the Commission.

11. In these circumstances and for the reasons set out in the preceding paragraphs, the review petitioner has not laid out any case for reviewing the order passed by the Commission in O.P.No.2 of 2024. However, it does not restrict the petitioner from claiming the said amount in appropriate proceedings setting out the proper evidence in support of the claim and the way forward in treating the amount in the subsequent control period.

12. With these observations the review petition stands disposed off but in the circumstances without any costs.

This order is corrected and signed on this the 18th day of October, 2024.

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| Sd/- (BANDARU KRISHNAIAH) MEMBER | Sd/- (M. D. MANOHAR RAJU) MEMBER | Sd/- (T. SRIRANGA RAO) CHAIRMAN |
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