

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION, BHOPAL

Sub : Application for review of order dated 11.04.2012 passed in Petition No. 19/2012.

Petition No. 43/2012

ORDER

**(Date of hearing 25th June, 2012)
(Date of order 27th June, 2012)**

M/s Rajaram Maize Products,
(Wind Power Division),
Kailash Nagar, Rajanandgaon

- Petitioner

Shri S.R.Rao, Advocate and Shri Manoj Choube, Manager appeared on behalf of the Petitioner.

2. The petitioner has filed this petition in the matter of review of order dated 11.04.2012 passed in petition No. 19/2012.

3. The petitioner is seeking review of order dated 11.04.2012 on the following grounds :

(a) Review of the tariff rate under Clause 12 of the tariff order dated 21.11.2007 is permissible anytime before the end of the control period, subject to fulfillment of the conditions imposed in the subsequent clause.

(b) Limitation of 60 days is not applicable in respect of such review under Clause 12 of the Tariff Order.

(c) Review Petition No. 19/2012 was filed before the end of the control period i.e. 31.03.2012, hence, there was no delay in making the review petition.

(d) Dismissal of the Review Petition No. 19/2012 on the ground of delay by reckoning the limitation period of 60 days from 21.11.2007 i.e. the date of tariff order is a mistake apparent on record.

(e) Under Order 47, Rule – 1 of CPC any order/judgment, is open to review, *interalia*, if there is a mistake or an error apparent on the face of the record.

4. The case was listed for motion hearing on 25.06.2012.

(cont. to next page)

Sub : Application for review of order dated 11.04.2012 passed in Petition No. 19/2012.

5. During the motion hearing on 25.06.2012, representative of the petitioner reiterated the contents of the petition and requested review of the tariff rate under Clause 12 of the tariff order dated 21.11.2007. He has also stated the clause 12.2 of Tariff order dated 21.11.2007 which provides as under :-

“12.2 An earlier review of the Tariff rate before the control period may be undertaken under exceptional circumstances, if the need for such review is clearly demonstrated with adequate supporting material.”

6. During the motion hearing, the Commission enquired from the petitioner whether he is aware of review of tariff order dated 21.11.2007. The representative of the petitioner however could not address the issue adequately. Further, on the question of maintainability of second review of tariff order under the Code of Civil Procedure, the representative of the petitioner submitted that the review is maintainable if there is a mistake or an error apparent on the face of the record and dismissal of review petition no. 19/2012 on the ground of delay by reckoning the limitation period of 60 days from 21.11.2007 i.e. the date of tariff order is a mistake apparent on record.

7. On hearing the petitioner, the Commission observes that clause 12.29 of the Tariff order dated 21.11.2007 provides as under :-

“12.29 The Commission reserves the right to alter, modify or amend any provisions of this order at any time. The Commission feels that this provision is necessary so that any fact which has been overlooked can be incorporated subsequently or any new situation emerges due to experience gained during the operation of the order can be suitably addressed in the interest of the stakeholders.”

Accordingly, the Commission after considering the substantial increase in capital cost as well as guidelines issued by CERC on 16.09.2009 as the new situation during the control period which was to end on 31.03.2012, decided to revisit the existing norms for determination of tariff before the expiry of the control period and

(cont. to next page)

Sub : Application for review of order dated 11.04.2012 passed in Petition No. 19/2012.

issued a revised tariff order on 14th May, 2010, which is applicable to all new wind electric generation projects commissioned on or after the date of issue of order i.e. 14.05.2010. The Commission also observes that necessary provisions for existing projects have already been made in clause 12.29 of the Tariff order dated 14.05.2010 as under:-

“12.29 The existing projects are those, which have their date of commissioning before the date on which this current order comes into effect. The tariff payable to the existing projects for sale to the licensees shall be governed under the same terms and conditions applicable at the time of execution of agreement for those projects.”

As such, the petitioner’s submission that no provision regarding units covered under Tariff order dated 21.11.2007 was made in Tariff order dated 14.05.2010, is misplaced.

8. The Commission further observes that clause 40 of MPERC (Conduct of Business) Regulations, 2004 provides the time limit of 60 days for review of tariff order and the review petition no. 19/2012 was filed by the petitioner after a gap of more than 4 years and hence the petition was not found maintainable. The Tariff review period/control period as mentioned in clause 5 of the Tariff order dated 21.11.2007 is meant for the purpose that the tariff decided in a particular control period shall apply to all projects which come up within that control period and the tariff determined for a project shall remain in effect for the whole project life. The Tariff review period/control period does not indicate the period up to which an application for review of tariff order can be filed even if the said tariff order is already revised. As such, the petitioner’s belief that review petition can be made up to 31.03.2012 is misconceived.

9. The Commission observes that the review of ‘review of tariff order’ i.e. second review is not permissible under the provisions of the Code of Civil Procedure. The

(cont. to next page)

Sub : Application for review of order dated 11.04.2012 passed in Petition No. 19/2012.

Commission is, therefore, of the view that the petition is not admissible and is liable to be rejected.

10. In view of the above, the review petition No. 43 of 2012 stands dismissed.

Ordered accordingly,

sd/-
(C.S.Sharma)
Member

sd/-
(Rakesh Sahni)
Chairman