

**IN THE JHARKHAND STATE ELECTRICITY REGULATORY COMMISSION AT
RANCHI
Case No. 4 of 2023**

Damodar Valley Corporation (DVC) Petitioner

Vs

Association of the DVC HT Consumer of Jharkhand Respondent

**CORAM: HON'BLE MR. JUSTICE AMITAV K. GUPTA, CHAIRPERSON
HON'BLE MR. MAHENDRA PRASAD, MEMBER (LAW)
HON'BLE MR. ATUL KUMAR, MEMBER (TECH)**

For the Petitioner : Mr. A. K. Mehta, Advocate

For the Respondent : Mr. Saket Upadhyay, Advocate

Date – 09th January, 2024

1. Damodar Valley Corporation (DVC) has submitted an affidavited petition purported to be filed under section 94 (1)(f) of the Electricity Act, 2003 read with Regulation 41 of JSERC (Conduct of Business) Regulations, 2016 for Review of Order dated 30.01.2023 passed in Case (T) no. 11 of 2020 regarding True-up for FY 2019-20.
2. The Prayers of the petitioner-DVC are as under: -
 - (a) Admit the present Review Petition of DVC.
 - (b) Review the order dtd. 30.01.2023 and allow expenses on account of Legal Charges and Consultancy Fees based on the submission made in present petition.
 - (c) Review the order dtd. 30.01.2023 and allow DVC to recover Incentive on achieving Transmission Availability factor (TAFY) more than 98.5% of DVC T&D system based on the submission made in present petition.
 - (d) Pass such other order(s) as the Hon'ble Commission may deem fit and proper keeping in view the facts and circumstances of the case.

True-up for FY 2019-20

I. Disallowance of the Legal Charges and Consultancy Fees:

Petitioner's Submission

3. Learned Counsel for the petitioner has submitted that the Hon'ble JSERC has disallowed the Legal Charges and Consultancy Fees on the ground that DVC has not submitted any documents in support of its claim that such expenses are not covered under normative O&M expenses, as approved by CERC. Relevant portion of the order is reproduced below,

"The Commission has examined the submission made by the Petitioner and observes that the Petitioner has not submitted any documents in support of its claim that such expenses are not included in the normative O&M expenses approved by CERC and therefore the Commission has not approved any Legal and Consultancy charges claimed by the Petitioner."

4. In this respect, it is humbly submitted that, while fixing the Normative O&M parameters for Transmission assets in the Tariff Regulations 2019, Hon'ble

Central Commission has considered parameters for the last five-years of different Transmission Licensees (more specifically PGCIL, being the largest Transmission Licensees in the Country) but has not mentioned any provision for Legal expense. Reliance may be placed on the fact that, DVC network had been adjudged as Unified Transmission and Distribution network by the Hon'ble APTEL Vide order dated 23.11.2007. The said judgment of APTEL was challenged before the Hon'ble Supreme Court, and the Hon'ble Apex court vide its order dated 23.07.2018, was pleased to uphold the said Judgement of APTEL. Therefore, the Tariff of T&D network of DVC is being determined by the CERC following the norms set for a Transmission Licensee. However, unlike other Transmission Licensees, DVC also undertakes distribution activity and serves hundreds of Consumers. However, for such additional activity of DVC, CERC does not allow any additional cost except what has been set in the Normative Parameters. However, the involvement in the distribution activity attracts more legal litigations than transmission business, as the number of consumers being served is more in this business. DVC in the FY 2019-20, has incurred substantial amount as legal expenditure to defend its stake before different legal forums, which is solely attributable for its distribution activity. More importantly, in accordance with Regulation 10.7 of the JSERC Distribution Tariff Regulation, 2020, legal expenses are allowed to a distribution licensee as a separate element in addition to O&M expenditure. Relevant extract of the regulation is reproduced below,

"The Distribution Licensee, in addition to the above details shall also submit the detailed break-up of the Legal Litigation Expenses for the previous Years (FY 2015- 16 to FY 2019-20) along with the details and documentary evidence of incurring such expenses. The Commission shall approve the legal expenses as per the relevant provisions of the Jharkhand State Litigation Policy based on the necessary documentary evidence submitted for the Control Period and shall carry out due prudence check of legal expenses at the time of truing up"

5. In this regard DVC submits the amount incurred under the head Legal Charges and consultancy fees during the FY 2019-20 duly certified by a Chartered Accountant firm to establish its claim. In view of the above, DVC ought to be allowed the legal expenditure attributable to its Distribution Business on actual basis for the period FY 2019-20.
6. Hon'ble WBERC has also allowed legal charges in Tariff as well as True-up order of DVC.

Commission's Analysis

7. The Commission has observed that the JSERC (Terms and Conditions for Determination of Distribution Tariff) Regulations, 2015 does not contain any clause for approval of Legal and Consultancy Charges separately.
8. Further, the Commission is of the view that the Petitioner had not submitted any documents in support of its claim that such expenses are not included in the normative O&M expenses approved by CERC and therefore the Commission has not approved any Legal and Consultancy charges as claimed by the Petitioner.

9. With regard to the submission of Auditor's Certificate, the Commission has observed that the impugned Order has been approved on January 30, 2023, whereas the date of the Auditors' Certificate is February 28, 2023, i.e., after issuance of the impugned Order. Hence the same, cannot be considered at this stage.
10. In view of the above, **Issue No-I**, as raised by the petitioner, does not warrant any intervention through a review process, and as such, it is hereby dismissed.

II. Error in Computation of Incentive for Achievement of Transmission Availability Factor (TAF) of DVC T&D system more than 98.56%:

Petitioner's Submission

11. In accordance with clause 46 (2) of the CERC (Terms and Conditions of Tariff) Regulation, 2019, the petitioner has submitted that if a Transmission System achieves Availability factor more than 98.5% during the whole financial year, Incentive on the Annual Fixed Cost (AFC) is allowable for the availability factor on or above 98.5% subject to ceiling of 99.75%.
12. It was pointed out that the Hon'ble Commission has approved the Annual Transmission Availability factor for T&D system during the FY 2019-20 as 99.54% in the impugned order. Therefore, in terms of the above-mentioned regulation, DVC is entitled for an incentive on the recovery of the AFC for its T&D network. However, from Table-11 of the impugned order, it is evident that no incentive was allowed to DVC on the recovery of AFC of the T&D network for the FY 2019-20.

Commission's Analysis

13. The Commission is of the opinion, that the CERC had passed an order on the transmission tariff for the Eastern Region of DVC for FY 2019-20 to 2023-2024 without considering incentives, as mentioned in the Order dated 10.06.2022 and the Corrigendum Order dated 23.07.2022, even though the CERC (Terms and Conditions of Tariff) Regulations, 2019 contains provisions for approval of incentive on Transmission Charges based on Transmission System Availability.
14. Accordingly, the Commission is of the view that the computation of Incentive for Achievement of Transmission Availability Factor (TAF) of DVC T&D system shall be revised by this Commission when Hon'ble CERC issues the True up Order for the Control Period FY 2019-20 to 2023-2024.
15. In view of the above, **Issue No-II**, as raised by the petitioner, does not warrant any intervention through a review process, and as such, it is hereby dismissed.
16. Accordingly, the petition is rejected in terms of the above finding.

Sd/-
Member (T)

Sd/-
Member (L)

Sd/-
Chairperson