

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Misc. Appl. No. 67 of 2015

In the matter of:

Petition for review of the Commission's Order dated 30.07.2015 on "Petition for prior approval of Capital Investment for Renovation & Modernization of 3x30 MW MB-I HEP of UJVN Ltd".

And

In the matter of:

UJVN Ltd., Dehradun

.....Petitioner

And

Uttarakhand Power Corporation Ltd. (UPCL)

.....Respondent

CORAM

Shri Subhash Kumar

Chairman

Shri K.P. Singh

Member

Date of Hearing: February 09, 2016

Date of Order: February 12, 2016

ORDER

This Order relates to the Petition filed by UJVN Ltd. (hereinafter referred to as "UJVN Ltd." or "the Petitioner") for Review of the Commission's Order dated 30.07.2015 on "Petition for prior approval of Capital Investment for Renovation & Modernization of 3x30 MW MB-1 HEP of UJVN Ltd".

Background

2. UJVN Ltd. vide its letter No. 5598/UJVNL/01/MD/U-6 dated 28.09.2015 filed a Petition for Review of the Commission's Order dated 30.07.2015 for prior approval of Capital Investment for Renovation & Modernization of 3 X 30 MW MB-1 HEP of UJVN Ltd.

3. Earlier, the Commission vide its Order dated 30.07.2015 had held that:

"23. ... the Commission grants in-principle approval for the works discussed above and summarized below:

- (1) Replacement of underwater parts with HVOF coating.*
- (2) Revamping of Generators, Generator Transformers and other station auxiliaries*
- (3) Replacement of excitation system*
- (4) Replacement of governing system*
- (5) Revamping of cooling system*
- (6) Refurbishing works of Civil and Hydro-mechanical system proposed under this Petition except office & residential building and play ground."*

4. The Petitioner in its Review Petition has submitted that the Generator and Generator Transformer require replacement while the Commission has allowed it to revamp the above equipments/components of the Plant. The relevant para of the Petition are being reproduced below:

"

3.4.7. ... With R&M, the machine will have the capability of running reliably at full load and at 10% continuous overload. As such the replacement of Generator as well as Generator Transformers becomes imminent so as to bear the continuous as well as intermittent overload.

3.4.8. The Generator Transformers were commissioned in 1984 and are in use with regular upkeep and maintenance. Since these have been in operation for a very long time and our previous experience of extensive damages to Generator Transformers at Khatima HEP. The normative life of Transformer is 25-30 years only. So, it is proposed to replace 3 nos. of 40 MVA Generator Transformers capable of 10% overload of the Machines."

5. The Petitioner in its Review Petition has submitted that old and obsolete power house auxiliaries are required to be replaced with new & efficient systems and further submitted that spare parts of several old & outdated systems are not available with their Original Equipment Manufacturers. Further, the Petitioner has submitted that as per its previous experience the requirement of replacing equipment transpires during execution stage which further increases the execution time of Renovation, Modernisation & Upgradation (RMU).

6. With regard to replacement of equipments, the Petitioner in its Review Petition has submitted that one of the prospective bidders for RMU of MB-I HEP, has informed that there has been immense progress in all the fields of manufacturing, fabrication and insulation in last 30 years and the output of the generating units can be increased by replacing old or damaged components by redesigned components using state of the art material. Further, the prospective bidders strongly recommend that replacement of the equipment in this case would be the best techno-commercial and optimal solution.
7. The Petitioner in its Review Petition has also submitted that replacement of some components and repair of rest of the components shall not extend the plant life by another 30-35 years and issues of compatibility mismatch between new and repaired components shall arise. Therefore, complete replacement of the Generator, Generator Transformer and other station auxiliaries and cooling system can ensure the desired extension of life for another 30-35 years with reliability.
8. On the above mentioned grounds, the Petitioner has requested for accepting the Petition for review of the Commission's Order dated 30.07.2015 on "Petition for prior approval of Capital Investment for Renovation & Modernization of 3 x 30 MW MB-I HEP" and accord the prior approval comprehensively as per DPR of capital investment for Renovation & Modernization of 3 x 30 MW MB-I HEP.
9. On preliminary examination, the Commission decided to hold a hearing for maintainability of the Petition and fixed a date of hearing on 17.11.2015 and accordingly notice for hearing in the matter of admissibility was issued to UJVN Ltd. vide letter dated 02.11.2015. Meanwhile, a letter dated 16.11.2015 was received from the beneficiary of MB-I HEP namely UPCL requesting the Commission that it should be made respondent in the proceedings.
10. The Commission heard the Petitioner on the scheduled date and during the course of hearing, the Commission enquired from the Petitioner to justify the grounds of the review/reconsideration in respect of the provisions of Code of Civil Procedure (CPC), 1908 (5 of 1908).
11. The Petitioner reiterated its submissions before the Commission submitted vide letter No. 5598 dated 28.09.2015 justifying the grounds of review and emphasizing that the review of the Order has been sought on the grounds under '*other sufficient reasons*'.

12. Thereafter, an Order dated 17.11.2015 was issued wherein following direction had been given:
- “...
A notice be sent alongwith copy of the Petition to the sole beneficiaries namely UPCL for submitting their comments in the matter...”
13. In compliance to the direction issued in the Order dated 17.11.2015, notice alongwith the Petition was issued to the beneficiary i.e., UPCL for submitting its comments. In response to this, UPCL submitted its comments vide letter dated 16.12.2015. UPCL in its submission has submitted that the present Review Petition does not fulfill the criteria of review as per Order XLVII of CPC, 1908 and hence the Petition is not maintainable and liable to be dismissed.
14. The comments of UPCL were forwarded to the Petitioner and a date of hearing for admissibility was fixed on 09.02.2016. Accordingly, notice was issued to the Petitioner and the Respondent.
15. On the scheduled date of hearing i.e. 09.02.2016, the Commission heard the Petitioner and Respondent. During the proceedings, the Petitioner reiterated its submissions made in the earlier Petition and the subsequent submissions emphasizing on the issues of compatibility mismatch between new and refurbished components which were rebutted by the Respondent by reiterating its earlier submissions to the Commission in the matter. The Petitioner further submitted that the Review considered in the matter brought before the Commission are different from those presented in the traditional Courts.

Commission’s Observations, Views & Direction:

16. The issue-wise contentions of UJVN Ltd., filed in the Review Petition and subsequent submissions, were examined w.r.t. the principle of review enshrined in the provisions of Order XLVII (1) of the Code of Civil Procedure, 1908 and is observed that in accordance with such principles of review enshrined in the Code, an Order issued by the Commission may be reviewed if:
- (1) There is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced at the time when the Order was passed or order made.
 - (2) There is any error or mistake apparent on the face of the record.

(3) Or there is any other sufficient reason.

Hence, the Commission is of the view that the application for review has to be considered with great caution to ensure that it fulfil one of the above requirements to be maintainable under law. On the discovery of new evidence, the application should conclusively demonstrate that:

- (i) Such evidence was available and was of undoubted character;
- (ii) It was so material that its absence might cause miscarriage of justice.

Therefore, from above it is well settled that the review proceedings have to be confined to the scope and ambit of Order XLVII Rule 1 of the Civil Procedure Code.

17. Further, on examination of the Review Petition and subsequent submissions with respect to the above provisions of the law, it has been observed that the Commission in its Order dated 30.07.2015 granted the in-principle approval of RMU of MB-I HEP after due diligence and examination of the proposal and subsequent submissions made by UJVN Ltd. at that time. The issues, on which the review is being sought, have already been discussed in detail in the aforesaid Order and also dealt with at para 19 & 20 of the Order at length. The said para of the Order is being reproduced below:

“

19. *However, with regard to the activities proposed for Generator, the Commission observed that in the operating life of last 30 years, loss in generation due to the breakdown of generator with existing class-B insulation is negligible and the respective Generators of all the Units have proven its reliability during FY 2010-11 and FY 2011-12 wherein, HVOF coating resulted in substantial increase in generation. Therefore, by undertaking the following revamping activities namely Stator and Rotor poles from class-B to class-F insulation including other revamping works, replacement of conventional Excitation System with Static Excitation System, replacement of conventional Governing System with Micro-processor based electro hydraulic Governing system would increase the reliability in operation as well as result in life extension of the HEP.*

Therefore, the Commission holds that replacement of Generator at this juncture is not needed revamping of the existing Generators of all the Units with modernization of Excitation System would suffice which is consistent with option 2 suggested by the Consultant.

20. *With regard to the replacement of Generator Transformers and other auxiliaries, it is observed that the reasons stated in the Petitioner's proposal and its subsequent submissions do not substantiate the need for complete replacement of static electrical equipments. UJVN Ltd. should rather go for revamping generator transformers with insulation up-gradations and replacement of accessories, if required. Similarly, with regard to Power House Auxiliaries, Control and Protection Equipments and Switch-yard Equipments, UJVN Ltd. should explore cost effective solutions and should replace only those equipment where the cost of replacement is lesser than the cost of revamping of these equipments without compromising the quality and design of the system."*

From the plain reading of the above para of the aforesaid Order, it is understood that the decision of the Commission made in the aforesaid Order was conscious and based on the facts & figures brought before it during the proceedings.

18. Therefore, it has been established that the Petitioner has not submitted any new important fact which could influence the earlier Order dated 30.07.2015. To this the Commission is of the view that a repetition of old and overruled argument is not enough to re-open concluded Order.
19. The Review Petition of the Petitioner is found to be devoid of grounds for seeking review in the matter as mentioned at above para 16 (1) & 16 (2) which does not hold valid as neither the Petitioner has mentioned any new & important matter of evidence nor the Order made was on account of some mistake or any error apparent on the face of the record. Moreover, above para 16 (3) i.e. 'other sufficient reasons' is supplementary to the grounds stated at para 16 (1) & 16 (2) above, which take color therefrom and cannot be considered independently.
20. It appears that the Petitioner is seeking review of the Order merely rearguing the original matter and seeks a fresh decision of the case as none of the grounds mentioned by the Petitioner qualify the essentials of review. Supplementing this, principally the Order by the Commission is final and deviation from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so leading to requirement for review of an Order.
21. Moreover, it is beyond dispute that a Review proceeding cannot be equated with the original hearing of the case. The finality of the judgment delivered by the Commission

will not be reconsidered except where a glaring omission or patent mistake or like grave error has crept in earlier Order by fallibility.

22. In light of the above, the Commission observed that the grounds, brought before for review, are not sustainable and hence holds that the Review Petition is not maintainable and accordingly decides to reject it.

Ordered accordingly.

(K.P. Singh)
Member

(Subhash Kumar)
Chairman