

ORDER

JOINT ELECTRICITY REGULATORY COMMISSION
FOR THE STATE OF GOA & UNION TERRITORIES
GURUGRAM

CORAM

Ms. Jyoti Prasad, Member (Law)

Review Petition No. 83/2022

Date of Hearing: 15.12.2022

Date of Order: 25.04.2023

In the matter of:

Relaxation of the Provision 4.4 of the JERC for the State of Goa and Union Territories (Solar PV Grid Interactive System based on Net-Metering) Regulations, 2019, imposing cap on maximum Solar Power Generation Capacity to be installed at Consumer premises.

AND IN THE MATTER OF:

M/s. Rane Brake Lining Limited,
HT Industrial Consumer,
Thirubuvanai, Puducherry

.....Review Petitioner

AND IN THE MATTER OF:

The Electricity Department,
Government of Puducherry (PED)
Netaji Subhash Chandra Bose Salai, Duppuypet,
Puducherry 605 001

..... Respondent

Present: -

For the Review Petitioner

1. Sh. Babu Nizam, AVP, M/s. Rane Brake Lining Limited
2. Sh. Gopal, M/s. Rane Brake Lining Limited
3. Sh. B. Shagulhamed, M/s. Rane Brake Lining Limited.

For the Respondent

1. Sh. T. Chanemougam, Superintending Engineer cum Head of Department, Electricity Department, Puducherry
2. Sh. V. Sreedharan, Superintending Engineer, ED, Puducherry

ORDER

The Review Petitioner through this review petition has sought review of the impugned order dated 15.07.2021 in petition no. 46/2021.

The Commission heard both the Review Petitioner and respondent at length.

The learned council for the Review Petitioner advanced his arguments in detail. The brief of the arguments made on behalf of the Review Petitioner are as under: -

- I. That our industrial unit in the name of M/s. Rane Brake Lining Ltd., is functioning at R.S. No. 48, 49 & 50, Sanyasikuppam village, Thirubuvanai Post, Puducherry provided with HT electric service connection from the Electricity Department, Puducherry. The Contracted Maximum Demand of the HT service is 1300 KVA and the Service Number is 334/HT-1(a).
- II. That the Electricity Department, Puducherry have extended grid connectivity to the grid interactive solar PV power plant of capacity 1170 KW installed within our factory premises and entered into Group Net metering agreement under the provisions of JERC for the State of Goa and UTs (Solar PV grid interactive system based on Net-Metering) Regulations, 2019.
- III. That in order to back our corporate initiative of going green, we intend to install additional capacity of 830 KW of solar power augmenting to the existing installed capacity of 1170 KW and to utilize the entire solar energy generated from the said plant for our captive use.
- IV. That the Electricity Department, has stated that as per provision 4.4 of "Joint Electricity Regulatory Commission for the State of Goa and Union Territories (Solar PV Grid Interactive System based on Net Metering) Regulations, 2019", it is not possible to provide approval for the additional 830 KW in the existing power plant capacity of 1170 KW (Net Metering) as the aggregate capacity exceeds the Contracted Demand in the existing service connection.
- V. That our factory with Contracted Demand of 1300 KVA entered with the Electricity Department, Puducherry operates three shifts and our electricity consumption is almost constant over 24 hours including night hours. The Electricity consumption of the factory for a typical month is around 4,65,000 kWh. Whereas, the solar energy generated from the existing installed capacity of 1170 is around 1,45,000 units per month, which serves only one third of our energy requirement. Thus, we intend to augment our quantum of energy consumption sourced from the solar power, as part of our initiative to support promotion of green energy in the region.

- VI. That with the augmentation of installed capacity of solar power plant aggregating to 2000 KW, the monthly solar units generated would account for about 45%-50% of our total monthly consumption and thus the Electricity Department, Puducherry shall never pay for the excess units injected into the grid.
- VII. That the Government of India have also made the provisions in the Electricity Act, 2003 and the Regulations framed thereon for promoting green energy development across the nation.
- VIII. That the Ministry of Power Govt. of India has notified the draft Electricity (Promoting renewable energy through green energy open access) Rules 2021, as part of their initiative to achieve their target capacity installation of Renewable Energy of 175 GW in the Country.
- IX. That the provision 4(2) (A) of the draft Electricity (Promoting renewable energy through green energy open access) Rules 2021 states that *“Own Generation from Renewable Energy sources”*: *There shall not be any capacity limit for installation of power plant from Renewable Energy sources behind the meter. “Behind the meter” means the electricity generated for their own use and not for injection of such power into electricity Grid. Distribution licensee shall not be liable to purchase such energy. The Generating plant may be set up by the Entity itself or by a Developer with which the Entity enters into a Medium/Long Term Power Purchase Agreement.*

Further provision (8) of the draft Electricity Rules, 2021 provides for

- (i) Banking may be permitted on monthly basis on payment of charges to compensate additional cost, if any to the distribution licensee by the Banking. The appropriate commission shall fix the applicable banking charges.*
- X. That all legal and regulatory provisions of statutory bodies do support development of RE power across the nation and recommend no limit on the capacity of Renewable Energy power plant installed for own consumption (“Behind the meter” at their own premises). There is no bar on corporate mission as well on sustainable development by augmenting use of solar energy as our main source of energy consumption. The above draft provisions clearly state that,
 - No capacity restrictions shall be applicable for the captive generating unit (Own Generation – “behind the meter”).
 - Energy Banking provisions shall be extended to RE power with applicable Charges.
- XI. That the complete solar power plant installed in our factory premises is owned by us and thus the same may be treated as captive power plant/“ Own Generation-Behind the Meter” as per provisions under the Electricity Act 2003 and the Electricity Rules 2005 and as recommended in the Ministry of Power Draft Rules

2021. Thus, as no capacity restrictions is required for captive power plant, we may be permitted to connect the additional installed capacity of 830 MW of solar power plant to the grid along with the existing grid connected solar PP of installed capacity of 1170 MW under single net metering facility. The entire energy generated from the solar plant of aggregate capacity of 2000 KW would be utilized for captive use with banking facility.

- XII. That the total connected load of the factory is 2000 KW and the capacity of the existing Transformer at site is 2500 KVA. The Electricity Department, Puducherry, who was respondent had submitted to the Hon'ble Commission that the augmentation of capacity to 2000 KW at our premises is technically feasible.
- XIII. The Review Petitioner has prayed as under: -
- 1) Approve the complete (2MW) solar power plant installed in our factory premises as a captive power plant.
 - 2) Direct the Electricity Department, Puducherry to provide grid connectivity to the additional installed capacity of 830 KW in the existing solar power plant with single net metering arrangement.
 - 3) Direct the Electricity Department, Puducherry to provide energy banking facilities accounted on annual basis with the applicable banking charges as determined by the Hon'ble Commission.

The brief of the arguments advanced on behalf of the Respondent are as under:-

- I. That grid connectivity has been provided to the solar PV power plant 1170 KWp setup within the premises of Review Petitioner, M/s. Rane Brake Linings Ltd, Sanyasikuppam Village, Thirubuvanai, Puducherry with Net metering arrangement as per the provisions of JERC (Solar PV Grid interactive system based on the Net metering) Regulations, 2019.
- II. That there are no legal grounds for review of the impugned order dated 15.07.2021. The Review Petitioner is not maintainable therefore it may be dismissed.
- III. That the Review Petitioner has cited Rule 4 (2) (A) and Rule 8 of Ministry of Power's draft Electricity (Promoting renewable energy through green energy open access) Rules 2021 which provides no capacity limitation for installation of the power plant from renewable energy sources **behind the meter** for own generation and use and no injection of the such power into the grid.
- IV. That subsequent to the MOP's draft Rules 2021, the Government of India notified the Electricity (Promoting renewable energy through green energy open access) Rules 2022 on 6th June, 2022. The extract of Rule 4 (2) (A) is reproduced below.

QUOTE

. Renewable Purchase Obligations

.....

(2) Any entity, whether obligated or not may elect to generate, purchase and consume renewable energy as per their requirements by one or more of the followings methods:

(A) Own Generation from renewable energy sources. - There shall not be any capacity limit for installation of power plants from renewable energy sources, by entities for their own consumption and such plants may be set up at any location in India and power shall be transmitted by using open access:

Provided that the generating plant may be set up by entity itself or by a developer with which the entity has entered into a power purchase agreement.....

UNQUOTE

- V. That Electricity Department, Puducherry submits that as per the notified Electricity Rules 2022, (Promoting renewable energy through green energy open access) the provision of **behind the meter** contemplated in the draft Rules 2021 has been removed.
- VI. That under the notified Rule 4 (2) (A) there is no capacity limitation of the installation of power plants from renewable energy sources for such plants which are setup by the entity at **any location in India and power transmitted by using Open access** and thus this rule does not provide any such solar PV plant capacity limit exemption for such plants which are installed within the premises of the Entity with Net metering arrangement.
- VII. That as such the Electricity (Promoting renewable energy through green energy open access) Rules 2022 may not provide any relief to the Review Petitioner to allow installation of excess capacity of Solar PV power plants beyond Contracted Maximum Demand within their factory premises under Net metering arrangement.
- VIII. That the Regulation 4.4 of Joint Electricity Regulatory Commission for the State of Goa and Union Territories (Solar PV Grid Interactive System based on Net Metering) Regulations, 2019 is only applicable which does not allow the Review Petitioner for installation and synchronization of additional solar PV power plants beyond the sanctioned contracted demand of 1300 KVA under net metering arrangement.

The Commission has considered the submissions made by the Review Petitioner and the Respondent. It has also examined the entire records placed before it along with specific relevant provisions of the Electricity Act, 2003, Rules and Regulations made thereunder. At the same time Commission also revisited the impugned tariff order dated 18.05.2020.

The Commission's power to review its own orders flows from Section 94 (1)(f) of the Electricity Act, 2003 and are the same as those conferred on a Civil Court under Order 47, Rule 1 of the Code of Civil Procedure (CPC).

Section 94 of the Electricity Act, 2003 provides that:

"The Appropriate Commission shall, for the purposes of any inquiry of proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the followings matters, namely: -

.....(f) reviewing its decisions, directions and orders."

Order 47, Rule of CPC mandates that a Court of review may allow a review on three specific grounds which are as under:

- a) If there are mistakes or errors apparent on the face of the record, or

- b) On discovery of new and important matter or evidence which, after due diligence was not within knowledge of the aggrieved person or evidence could not be produced at the time of making the order, or
- c) For any other sufficient reasons which are analogous to the above two grounds.

Under Order 47, Rule 1, CPC Order / judgment may be opened to review inter-alia, if there is a mistake or an error apparent on the face of record. An error which is not self-evident but needs to be detected by process or reasoning can hardly be said to be an error apparent on the face of the record, justifying the Court to exercise its power of review under the above said provisions. To qualify under this provision, an error must be one which speaks for itself and is glaring and difficult to be ignored. A review petition has a limited purpose and cannot be allowed to be an appeal in disguise and it cannot be exercised on the ground that the decision was erroneous on merits. But simultaneously, the materials on record, which on proper consideration may justify the claim, cannot be ignored. The law has made clear distinction between what is an erroneous decision and an error apparent on the face of the record.

The Commission has noted that Review Petitioner in its Review Petition sought relaxation of the Provision 4.4 of the JERC (Solar PV Grid Interactive System based on Net Metering) Regulations, 2019 “ *The maximum Solar Power Generation capacity to be installed at any Eligible Consumer’s Premises shall not exceed his Contract Demand (in Kva) or Sanctioned Load (in Kw)*”, approval of the complete Solar Plant of 2 MW installed in its premises, provide Grid Connectivity to the additional installed capacity of 830 KW in the existing Solar Plant with single Net Metering arrangement and direction to Electricity Department, Puducherry to provide energy banking facility accounted on annual basis with the applicable banking charge as determined by the Commission.

The Commission, after hearing the petitioner in depth has rejected its request by the said impugned order, in Petition No. 46/2021, as it was legally untenable.

The Commission further noted that the Review Petitioner did not make any submission for Review of the impugned order on any of the three grounds elaborated in order 47 Rule 2 of CPC. It is very strange that Review Petitioner has advanced a new plea based on Provision 4 (2) A of the draft Rules -20 21 of Govt. of India. Wherein it is provided that. “ there shall not be any capacity limit for installation of power plant from Renewable Energy sources behind the meter. “Behind the meter” means the electricity generated for their own use and not for injection of such power into electricity Grid. The distribution licensee shall not be liable to purchase such power/energy.”

Further provision (8) of the draft Electricity Rules, 2021 provides for

- (i) *Banking may be permitted on monthly basis on payment of charges to compensate additional cost, if any to the distribution licensee by the Banking. The appropriate commission shall fix the applicable banking charges.*

The Commission further noted that Electricity Department, Puducherry has submitted that subsequent to the MOP’s draft Rules, 2021 the Government of India notified the Electricity

(Promoting renewable energy through green open access) Rules 2022 on 6th June, 2022. The extract of Rule 4 (2) (A) is reproduced below.

QUOTE

Renewable Purchase Obligations

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(A) Own Generation from renewable energy sources. There shall not be any capacity limit for installation of power plants from renewable energy sources, by entities for their own consumption and such plants may be set up at any location in India and power shall be transmitted by using open access:

Provided that the generating plant may be set up by entity itself or by a developer with which the entity has entered into a power purchase agreement.

(G)

UNQUOTE

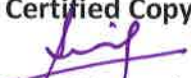
It is settled law that new ground cannot be raised in the Review Petition as it is certainly not an appeal against the impugned order. From the above it is clear that the Review sought on the basis of provision 4 (2) A of the draft Electricity Rule, 2021 is legally not maintainable. Further the Govt of India notified the Electricity (Promoting renewable energy through green open access) Rules 2022. Wherein it is provided that *"There shall not be any capacity limit for installation of power plants from renewable energy sources, by entities for their own consumption and such plants may be set up at any location in India and power shall be transmitted by using open access:*

Provided that the generating plant may be set up by entity itself or by a developer with which the entity has entered into a power purchase agreement".

In view of the above, Commission is not inclined to accept, the pleas advanced by the Review Petitioner. The Review Petitioner has failed to make its case. At the same time the Commission is fully convinced with the submissions of Respondent. The Commission is fully convinced that there is no valid ground raised by the Review Petitioner to set aside the said impugned order. Hence, the Commission hereby dismisses the said Review Petition.

Ordered accordingly.

Sd/-
(Jyoti Prasad)
Member (Law)

Certified Copy

(S.D Sharma)
(Secretary, (I/c), JERC)