

Review Petition No. 205/06

In the matter of:

M/s Sri Rama Steels Ltd., Village Bated, Baddi Road, Barotiwala, Tehsil Kasauli Sadar, Distt. Solan, HP.

.... Petitioner

Versus

1. Himachal Pradesh State Electricity Board (HPSEB), Vidyut Bhawan, Shimla-4.
2. The Asstt. Executive Engineer, Electrical Sub-Div. Barotiwala, Distt. Solan.

... Respondents.

Present for: Petitioner: M/s Sri Rama Steels Ltd.

Sh.O.C.Sharma, Adv.
Sh. R.S.Thakur, Adv.

Respondents HPSEB:

Sh.Bimal Gupta, Adv.

ORDER

25.11.2006.

M/s Sri Rama Steels Ltd. Village Bated, Baddi Road, Barotiwala Tehsil Kasuali Distt. Solan, HP have moved the petition for review of the order dated 8.9.2006, whereby this Commission declined to admit the second appeal and the stay application against the order of the Forum for Redressal of Grievances HPSEB (hereinafter referred as "Forum") on complaint No.1425305001 decided on 5.10.2005; and also against the order of the Appellate Authority i.e. the Electricity Ombudsman appointed under section 42(6) of the Electricity Act, 2003. The orders made by the Forum and the Electricity Ombudsman, disposing of the complaint and the ad-interim stay application moved by the petitioner company, are exhaustive and self explanatory.

Keeping in view that the findings of the Forum as well as of the Ombudsman on facts were concurrent and the legal questions raised in second appeal by the petitioner were already elaborately dealt with by the Electricity Ombudsman and also the petitioner, when during the hearing specifically called upon by the Commission, failed to point out any substantial question of the law to be considered; this Commission declined to admit the second appeal.

The petitioner company has now sought the review of the order dated 8.9.2006 on the grounds inter alia that:-

- (1) after the issuance of tariff order dated 29.10.2001 by the Commission, the Resident Audit Officer of the HP State Electricity Board inspected the premises and other electrical records of the petitioner company and the HPSEB in pursuance to the directions of the Resident Audit Officer confirmed and ratified the contract demand of applicant company as 2746 Kva. The inspection report whereby the contract demand of the applicant company has been revised is with the Resident Audit Officer of the HPSEB, Shimla and this fact was not in the knowledge of the applicant and the said order/inspection report of the RAO could not be produced before the Commission when the order dated 8.9.2006 was passed.
- (2) the recording the entry of contract demand in the energy bills, is the implied consent/agreement/ contract of the respondents for revision of the contract demand; as such the principle of promissory estoppel is attracted.

Sh. Bimal Gupta Learned Counsel, appearing for the respondent Board, has stated that all the points now being agitated by the petitioner have been discussed before the Forum and subsequently before the Electricity Ombudsman. As all the questions of facts and law points, raised by the petitioner company in the said appeal stood clearly answered there was hardly any need to re-examine the said issues.

The Commission has competence and power to review its own decision/orders, subject to the parameters as envisaged under section 114 of the CPC, extended by the provisions of section 94 of the Electricity Act, 2003. All the more review can be resorted to rectify accidental clerical error apparent on the face of the record. Section 114 of the CPC gives a substantive right of review in certain circumstances and Order 47 provides the procedure therefor. The provisions relating to review constitute an

exception to the general rule that once the judgment/order is signed and pronounced by the court it has no jurisdiction to alter it. An application for review of the judgment/order may be made on the following grounds:-

- (i) discovery of new and important fact or evidence which, after the exercise of the due diligence, was not within the knowledge of the party or could not be produced by him at the time when the order was made;
- (ii) mistake or error apparent on the face of the record;
- (iii) any other sufficient reason.

Thus the power of review is very limited in scope. A review proceeding can not be equated with the original hearing of the case. A review is by no means an appeal or revision in disguise whereby an erroneous decision is re-heard and corrected.

The petitioner has failed to prove that the production of the report of the Resident Audit Officer, would have possibly altered the decision/judgment sought to be reviewed. Mere statement to the extent that the petitioner company had no knowledge of the inspection report of the Resident Audit Officer and it could not be produced before the Commission when the impugned order dated 8.9.2006 was passed, is not sufficient. It is not only the discovery of the new and important evidence that entitles a party to apply for a review, but the discovery of new and important matter which was not within the knowledge of the party when the order was made is also required to be proved. When a review is sought on the ground of discovery of new evidence, the evidence must be (1) relevant and (2) be of such character that if it had been given it might possibly have altered the judgment. Application on this ground must be treated with the great caution and the court must be satisfied that the materials, placed before it in accordance with the formalities of the law, prove the existence of the facts alleged. The petition under consideration fails to satisfy this test.

The petitioner company has also invoked the doctrine of promissory estoppel, with reference to the Hon'ble Supreme Court verdict in M/s Moti Lal Padamapat Sugar Mills Company V/s State of UP and others reported in AIR 1979 SC 621. It is true that review may be granted where an error on point of law was apparent on the face of judgment but the point of law must be indisputable. Over looking a proposition of law well settled in Hon'ble Supreme Court amounts to error apparent on the face of the record. But this fact cannot be ignored that the doctrine of promissory estoppel as discussed in M/s Moti Lal's case (supra) has further been elaborated by the Hon'ble Supreme Court in its various subsequent verdicts given in Jit Ram Shiv Kumar V/s State of Haryana AIR 1980 SC 1285; Delhi Cloth & General Mills Ltd. V/s UOI AIR 1987 SC 2414 and the State of UP V/s Vijay Bahadur Singh AIR 1982 SC 1234. After some wavering, it is now clear that the equitable doctrine of promissory estoppel is applicable against the Government and its instrumentalities as against a private individual. But since the doctrine of promissory estoppel is an equitable doctrine, it is brought to limitations to which all equitable rights and obligations are subject for example:

- (a) it would be open for the Government or public authority to show that officer or agent who made the representation acted beyond scope of his authority and the person who dealt with him is supposed to have notice of the limitations of a public servant with whom he is dealing;
- (b) it would be open to the public authority to prove that there were special consideration which necessitated his not being able to comply with the obligations under the doctrine in the public interest;
- (c) the doctrine can not be invoked to prevent the Government/public authority from acting in discharge of its duty under the law;

All the more, it is well settled principle of law that the express provisions in the written agreement executed by the parties can only be amended/modified by subsequent agreement by the same parties or the persons who are competent to do so and not impliedly by the conduct of their subordinates. By any stretch of imagination an erroneous entry in the bills does not become a contract or agreement. In this regard the findings of the appellate authority i.e. the Electricity Ombudsman are correct and there is no reason to differ from the view taken by him.

In the light of the above discussions, the Commission finds no force in this ground also.

In the facts and circumstances brought on record, the Commission does not find any error apparent on the face of record and finds no cogent reasons to interfere with the impugned order dated 8.9.2006. Accordingly, the review petition is dismissed.

Announced in the open court and the case file is ordered to be consigned to the record room.

(Yogesh Khanna)
Chairman.

