

BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY
COMMISSION, SHIMLA

Review Petition No. 205/08

In the matter of:-

The H.P. State Electricity Board,
Vidyut Bhawan, Shimla-4

...Petitioner/applicant

V/s

M/S Padmavati Steels Ltd;
Vill Johron, Trilokpur Road,
Kal Amb, Distt. Sirmour (H.P.)

...Respondent

(Date of decision 24.02.2009)

Petition under section 94(1)(f) of the Electricity Act, 2003, read with regulation 63 of the HPERC (Conduct of Business) Regulations, 2005, for the review of the order dated 22nd August, 2008, passed in petition No. 219/07.

Present for:

Petitioner Sh. Narinder Singh Thakur Advocate

Respondent Sh. P.C. Deewan

ORDER

(Last heard on 7th February, 2009 and orders reserved)

The Himachal Pradesh State Electricity Board, Vidyut Bhawan, Shimla-4 (hereinafter referred as “ the petitioner/applicant Board”) has filed this petition seeking review of the order dated 22nd August, 2008 (hereinafter referred as “the impugned order”) passed by this Commission in petition No. 219/07 - M/S Padmavati Steels Ltd; Vill. Johron, Trilokpur Road, Kala Amb, Distt. Sirmour (HP) (hereinafter referred as “the respondent company”), imposing penalty of Rs. 10,000/- with regard to the contravention of the provisions of sections 43 and 62 of the Electricity Act, 2003 (hereinafter referred as “the Act”) and sub-regulation (3) of regulation 3 the HPERC (Licensee’s Duty for Supply of Electricity on Request) Regulations, 2004.

The petitioner Board has also prayed for condonation of delay of 3 days in filing this review petition.

2. The petitioner Board, through this review petition have sought the review of the impugned order on the grounds:-

- (a) that the provisions of sub-regulation (4) of regulation 3 of the HPERC (Licensee's Duty for Supply of Electricity on Request) Regulations, 2004 might have escaped the notice of the Commission. The said provisions provide that the delay, if any, relating to right of way, acquisition of land, or the delay in consumer's obligation to obtain approval of the Chief Electrical Inspector, or for any other similar reason beyond the reasonable control of the Distribution Licensee shall not be the responsibility of the licensee;
- (b) that the respondent company, completed the codal formalities on 30.6.2008 and connection was released on 10.7.2008, thus, therefore, the petitioner Board has not contravened the provisions of the Act and the regulations;
- (c) that the sale circulars No. 213/95 and 231/96, which provide for levy of revalidation charges by the Board, were issued prior to coming into force the Electricity Act, 2003 and as on to-day have not been replaced by the Supply Code to be framed under section 50 of the said Act and as such the Sales circulars issued u/s 79 of the Indian Electricity Act, 1910, prior to the Electricity Act, 2003, are valid still and are in conformity with the provisions of the Act;
- (d) that the proposal for revalidation charges for issuance of the Power Availability Certificate (PAC), in the Schedule of General Services, has been made in MYT petition for the FY 2007-08 filed on 6.2.2008 by the petitioner Board; which is still pending for adjudication;
- (e) that the Board and its officers have not willfully contravened the provisions of sections 43 and 63 of the Electricity Act, 2003 and HPERC (Licensee's Duty for Supply of Electricity on Request) Regulations, 2004;
- (f) that the penalty of Rs. 10,000/- imposed on the petitioner Board is harsh, as the Board has not contravened any direction/order/ regulation of the Commission; and the Board has released the connection within ten days after the completion of the codal formalities.

3. The petitioner Board, while moving this review petition has not impleaded the respondent Company as the defendant and the officers of the Board (impleaded as defendants in the main petition No.219/07) either as the co- petitioner or the proforma defendants in this review petition. However, on the directions of this Commission, made on 22.11.2008, a notice was also got sent to M/S Padmavati Steels Ltd; which were the petitioner in the main petition. The respondent company, in response to that order, has counteracted the submissions made in the review petition by the petitioner Board, by stating:-

- (i) that the petition neither contain any new point nor satisfy any condition necessitating review and hence not maintainable;
- (ii) that the petition is misleading and is far from the truth. The provisions in the regulations stipulate that the distribution licensee may approach the Commission for extension of time specified in specific cases, where the magnitude of extension of distribution mains or commissioning of the supply is such that the licensee will require more time, by duly furnishing the details of claim for such extension and if satisfied with justification given by the distribution licensee, the Commission may extend the time for commencing the supply. The petitioner Board has failed to come before the Commission with any proposal for extension of the time specified and thus has contravened provisions of the regulations;
- (iii) that the delay in inspection by the Chief Electrical Inspector etc., sought to be taken as shelter by the petitioner Board, are all subsequent issues and are irrelevant as these would come into picture only after completion of line and issuance of the Demand Notice. Thus the petitioner Board has no issue regarding delay in inspection by the Chief Electrical Inspector etc. and the petitioner Board has failed to comply with the basic provisions of the regulations;
- (iv) that in the PACs issued, to the respondent company, by the petitioner Board, it was mentioned that the release of the load would be subject to the augmentation of 132 kV sub-station at Johron. The said sub-station was, although, augmented in Nov., 2006, the petitioner Board never tried to inform the respondent company nor any Demand Notice was raised. Rather on repeated applications from the respondent company, the issue of revalidation

of PAC by paying a hefty sum was raised for no reason or logic, before proceeding further;

- (v) that the petitioner Board became serious for grant of connection only when the matter was placed before the Commission and only then the Demand Notice was issued on 13.03.2008, so there is little merit in Board's attempt to escape responsibility for delay;
- (vi) that the issuance of the PAC and revalidation, thereof, has been dealt with in details on merits in the main order and those issues cannot be re-opened by way of review petition; and mere inclusion of proposal for revalidation in the MYT petition, subsequently, is of no avail;
- (vii) that the Commission has already taken a rather lenient view. The petitioner Board has caused delay at all levels and has shown lack of sanitization in this case, therefore, the penalty already imposed is just a token. Sections 142 and 146 of the Electricity Act, 2003, provide for higher penalties for non-compliance of the regulations issued under the Act;
- (viii) that no reason for delay in filing the review petition has been given and hence the petition deserves to be dismissed, on merits, as well as it being time barred.

4. Before the Commission clinches the point in issue it would be desirable to spell out the scope of the power of the Commission to review its order. The scope/ authority of review is derived from the section 94(1)(f) of the Electricity Act 2003 and regulation 63 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005, read with section 114 and Order 47, rule 1, of the Code of Civil Procedure, 1908 ("CPC"). A person aggrieved by an order, from which no appeal has been preferred or no appeal is allowed may prefer a review on -

- (a) discovery of new and important matter of 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 made, or
- (b) mistake or an error apparent on the face of the record, or
- (c) any other sufficient reason.

5. As mistake(s) or an error(s), apparent on the face of record, cannot be defined precisely and exhaustively and there is an element of indefiniteness inherited in the terms, it is left to the discretion of the Court to determine the same judicially on the

basis of facts of the case. However, the error must be one that speaks for itself and is difficult to be ignored. However, the exercise of review is not permissible in the case of an erroneous order so as to render the order as "reheard and corrected". The law has made clear distinction between what is an erroneous decision and an error apparent on the face of the record. While the first can be corrected by only a higher forum, the later can be corrected by exercise of power of review. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all errors committed by the Subordinate Court.

6. The scope of review has been settled by Hon'ble Supreme Court in the case of **Parsion Devi V. Sumitri Devi, (1997) 8 SCC 715, Aribam Tuleshwar Sharma Vs Aribam Pishak Sharma AIR 1979 SC 1047, Raja Shatrunji V. Mohd. Azmat Azim Khan (1971)2SCC 200, Smt. Meera Bhanja Vs. Nirmala Kumari Choudhury AIR 1995 SC 455** and has also been followed by the Appellate Tribunal for Electricity in its orders (dated 17.11.2006) in Appeal no.40 of 2006, dated 23.11.2006 in appeal NO.80 to 197 of 2006 & Appeal No.226 of 2006. The Commission is in no way restricted in exercising its powers to conclude that the order suffers from a mistake of fact or law and review its order.

7. In **Aribam Tuleshwar Sharma V/S Aribam Pishak Sharma (AIR 1979 SC 1047)**, followed in case **Meera Bhanja V. Smt. Nirmal Kumari Chaudhary (AIR 1995 SC 455)**, and in **Haridas V/S Usha Rani Banik (AIR 2006 SC 1634)**, it has been reiterated that an error apparent on the face of the record of acquiring jurisdiction to review must be such an error which may strike one on a mere looking at the record and would not require any long drawn process of reasoning. The following observations in connection with an error apparent on the face of the record in the case of **Satyanarayan Laxminarayan Hedge V. Mallikarjun Bhavanappa Tiruymale (AIR 1960 SC 137)** are also noted:-

“An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior Court to issue such a writ.”

8. Relying upon the judgments in the cases of **Aribam's (supra) and Smt. Meera Bhanja (supra) the Hon'ble Supreme Court in the case of Parsion Devi V. Sumitri Devi (1997(8)SCC 715)** observed as under:

“Under Order XLVII, Rule 1, CPC a judgment may be open to review inter alia, if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of 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 Order XLVII, Rule 1, CPC. In exercise of the jurisdiction under Order XLVII, Rule 1, CPC it is not permissible for an erroneous decision to be reheard and corrected. A review petition, it must be remembered, has a limited purpose and cannot be allowed to be an appeal in disguise.”

9. Arguments were advanced by the Learned Counsels for the parties. Written submissions were also made. Though number of points raised at the hearing, discussion was confined to the sole basic question whether the impugned order suffers from a mistake of a fact or an error apparent on the face of the record and such mistake or error is so material that it may cause miscarriage of justice; and further there is ample justification to review the previous order.

10. The Commission has re-examined the matter and has concluded that the petitioner Board have failed to point out any new and important fact, which after due diligence, was not within its knowledge, or could not be produced at the time when the impugned order was passed or made; and to show any mistake or error apparent on the face of the record or other sufficient reason to review the Impugned Order. The petitioner Board has failed to comply with the basic provisions of the regulations and mere inclusion of proposal for revalidation in MYT petition, subsequently, and releasing of the connection on the intervention of the Commission can be of no-avail to the petitioner Board. Moreover, the erroneous decisions, if any, can be corrected by the Appellate Authority and not by the Reviewing Authority. A review cannot be equated with the original hearing of a case. A review petition has a limited purpose and cannot be allowed to be appeal in disguise and it cannot be exercised on the ground that decision was erroneous on merits.

11. With this background and the circumstances of this case and judgments cited and submissions made by the parties, the Commission finds no reasons to accept the review petition. Hence the review petition is rejected.

(Yogesh Khanna)
Chairman.