BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION SHIMLA

Review Petition No: 12 of 2023
Instituted on: 27.02.2023
Heard on: 25.04.2023
Decided on: 15.05.2023

CORAM

Devendra Kumar Sharma
CHAIRMAN

Yashwant Singh Chogal
MEMBER (Law)

In the matter of :

M/s DLI Power (India) Private Limited (DLIPL), having its
Himachal Pradesh office at
House No. 16, HP Officers Colony (West End),
Panthaghati, Shimla-171013, H.P through its
Authorised Representative Sh. V.S.V.A. Rao, Dy. General Manager (Commercial).

……. Petitioner

Versus

1. The HP Power Transmission Corporation Limited through its,
   Managing Director,
   Himfed Bhawan, Panjari, Shimla-171004.

2. The HP State Electricity Board Limited, through its
   Chief Engineer (System Operation),
   Vidyut Bhawan, Shimla-171004.

3. The State of Himachal Pradesh through its,
   the Additional Chief Secretary (MPP & Power),
   to the Govt. of Himachal Pradesh, Shimla-171002.

……..Respondents

Review Petition under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 63 of the HPERC (Conduct of Business) Regulations, 2005 for

review of Order dated 13.02.2023 passed by the Commission in Petition No. 33 of 2022 titled as 'DLI Power (India) Private Limited Vs HPPTCL &Ors.'

Present:

For the Petitioner:	Sh. L.S. Mehta, Ld. Counsel.
For the Respondent No.1:	Sh. Vikas Chauhan, Ld. Counsel
For the Respondent No. 2:	Ms. Vandana Thakur, Vice Counsel with Sh. Kamlesh Saklani, Authorised Representative.
For the Respondent No. 3:	Sh. Shanti Swaroop, Ld. Legal Consultant.

ORDER

This Petition for review has been filed by the Petitioner seeking review of Order dated 13.02.2023 passed by the Commission in Petition No. 33 of 2022.

2. As per the Petitioner, the Respondent No. 1 vide letter dated 21.02.2023 has raised demand of transmission charges for an amount of Rs. 1,54,08,731/- from the Petitioner to pay said charges within 7 days of the issuance of the letter, failing which, the Respondent No. 1 shall be constrained to remove the taps without any further notice (Annexure P-3). It is averred that the Commission while passing the Order dated 13.02.2023, has not considered that the Petitioner has neither availed Open Access till date nor sold the power other than Respondent No. 2/HPSEBL and in the absence of availing Open Access, the demand of transmission charges raised by the Respondent No. 1 is unjustified, illegal, arbitrary and without any basis.

3. It is averred that the Commission vide Order dated 06.07.2012 in Petition No. 137 of 2011, while determining the average pooled power purchase cost (APPC for short) for Financial Year 2012-2013 under REC Mechanism has held that the transmission charges are not applicable where power is being supplied at APPC rate and the Commission has failed to consider that the above APPC Order does not compel the generator to deliver the power at any fixed point or regular evacuation system and the only condition is that the sale of power is on APPC and not to any 3rd party other than local Discom. Further, the Commission has committed an error by observing that there is no document on record that the Respondent No. 2/HPSEBL has agreed to receive power from the premises of the power house of the Project as Respondent No. 2 is receiving the Power as per approved PPA.

4. It is also averred that the findings of the Commission that the Petitioner is liable to pay the cost of transmission charges are completely beyond and contrary to the conditions of the IPTA (Interim Power Transmission Agreement) dated 05.02.2018 which reads as under:-

'Whereas 66 kV switching Sub-station at Urni and 66/220/400 kV sub-station at Wangtoo are under construction and Raura SHP have not availed Open Access from HPPTCL and Long Term Access applications are still to be filed."

5. It is also mentioned that since Open Access has not been availed by the Petitioner and the interim power is being sold to the HPSEBL/Respondent No. 2, the payment of transmission charges based on Interim Power Transmission Agreement dated 05.02.2018 are in-admissible in the facts as well as in law.

6. Further averred that the Commission has committed an error while interpreting the 'Inter - connection Point' as according to IA/SIAs/PPA, 'Inter-connection Point' means the physical touch point where the Project line(s) and the allied equipments forming part of the 'interconnection facilities' are connected to the grid. As per the Petitioner, the Commission has failed to consider that there is no difference between Project line from Raura to Urni Sub-station or the present Project line from Raura to Tower No. 61 evacuating power in the conductor of Kashang-Bhabha line, which is part of inter/intra-state grid. Therefore, in both the conditions, whether on permanent or during the alternate arrangement, the liability of the Petitioner is to inject and deliver electricity through the Project line to the grid only up to the said 'Inter-connection Point'.

7. Further, as per the Petitioner, the Commission has failed to appreciate that it is not legally tenable to apply two different principles on transmission charges during sale of power to Respondent No.2/HPSEBL at the Permanent Inter-connection Point i.e. Designated Urni Sub-Station where no transmission charges are required to be paid by the Petitioner

and during interim arrangement, while connecting at Tower No. 61 Inter-connection Point on Kashang-Bhabha Line, where Transmission Charges @ 14 Paisa per unit are demanded by the Respondent No.1. According to Petitioner, the Commission has failed to consider and examine that there is nothing as Permanent or Temporary Inter-connection Point and since the Respondent No. 1 / HPPTCL could not make the designated Urni Sub-station available, the power had to be evacuated by alternate means and it does not make any difference whether the power is supplied or taken at permanent Inter-connection Point i.e. Urni Sub-station or the alternate Inter-connection Point (Tower No. 61) and the moot point is that the power is injected in the Grid and, hence, Tower No. 61 remains as the 'Designated Interconnection Point' and beyond that the transmission charges, if any, are to be borne by Respondent No. 2 which is receiving the power at the said Point.

8. As per the Petitioner, the Commission has not made any adjustment of the transmission charges despite that the MYT Order specifies tariff of 9 paise per unit for availing open access but the Petitioner has not availed the open access.

9. It is also averred that the Commission has erroneously interpreted the terms and conditions of the Connection Agreement dated 23.06.2016, as Clause 2.1 of the said Agreement specifically provides that the Petitioner is liable to pay charges for use of intra-state transmission

system as and when Long Term/Medium Term/Short Term Open Access is availed by the Petitioner, but in the case of Petitioner, no open access has been availed.

10. As per the Petitioner, Interim Power Transmission Agreement dated 05.02.2018 was signed by the Petitioner when there was no PPA between the Petitioner and Respondent No.2/HPSEBL and the transmission charges as per Interim Power Transmission Agreement (IPTA for short) would have been applicable, if the Petitioner had supplied its power to any third party other than the HPSEBL.

11. It is also the case of the Petitioner that the Commission has failed to consider that the Petitioner suffered a huge financial loss of constructing of two additional transmission lines on account of delay of the Respondent No. 1 in providing dedicated Sub-station at Urni. Not only this, the Commission had failed to consider that the power injected by the Petitioner at Kashang Bhabha line at Tower No. 61 is getting transmitted from Tower No. 91 of the Kashang-Bhabha line directly upto 66 kV feeder line and, thus, Clause (B) of IPTA relied upon by the Commission, has ceased to exist as the power has never been transmitted at 66 kV level to 220 kV Sub-station of Respondent No. 1 at Bhoktoo, stepped up to 220 kV and wheeled to 220 kV system of Respondent No. 2 at Bhabha Power House after 08.05.2020.

12. It has also been mentioned in the Petition that the Commission has failed to appreciate the law laid down by the Hon'ble APTEL in Appeal No. 264 of 2019 vide Order dated 03.11.2020.

13. The Petition has been resisted by the Respondents No. 1 and 2 by filing separate replies.

14. The Respondent No. 1 in its reply has averred that the Petition is not maintainable for want of requirements as envisaged in Order 47 Rule 1 of the Code of Civil Procedure, 1908. Further the Petitioner has failed to highlight the discovery of any new and important matter or evidence which after exercise of due diligence, was not within its knowledge or could not be produced when the Order dated 13.02.2023 was passed. Also averred that no mistake or error on face of record has been mentioned or that review is necessitated for any other sufficient reasons and rather, the Petitioner has reiterated the pleadings of the Petition No. 33 of 2022 and has requested the indulgence of the Commission on the basis of said averments.

15. As per the Replying Respondent, though the Urni Sub-station was completed in the month of January 2019 but the same could not be commissioned as 66 kV Urni-Wangtoo D/C line was not ready for commissioning due to the circumstances beyond the control of the replying respondent. It is mentioned that the 66 kV GIS Sub-station at Urni and the 66 kV D/C line from Urni Switching/ Sub - station to Wangtoo

Sub-station could achieve the COD only on 20.05.2022 and the major reason of delay of 66 kV D/C line was pendency of the matter in the High Court titled as Jyoti Lal and Others Vs. State of H.P. and Others (CWP No. 1670 of 2021) in which the Hon'ble High Court of H.P. vide Order dated 19.03.2021 had restrained the replying Respondent from laying the high voltage tower line till further orders. The said stay order was vacated by the Hon'ble High Court vide Order dated 28.03.2022, while withdrawing the Petition and only thereafter the remaining work was executed. According to replying Respondent, the work had also hampered due to non availability of labour on account of Covid-19 pandemic and complete lockdown. In the circumstances, the Petitioner was accommodated to evacuate the power from its project in terms of IPTA dated 05.02.2018. The copy of Orders dated 19.03.2018 and 28.03.2022 of the Hon'ble High Court have been annexed as Annexure R-1/A and Annexure R-1/B. It is also mentioned that the time over-run in commissioning the aforesaid assets has also been explained in a Petition filed before the Commission for approval of Capital Cost and Determination of Tariff for the period from COD (20.05.2022 to FY 2023-24) (Filing No. 219 of 2022) which is annexed as Annexure R-1/C.

16. As per the Respondent, the Commission had categorically mentioned all the reasons for findings in the Order dated 13.02.2023 and the Petitioner has failed to highlight even a single instance in the Order

dated 13.02.2023 wherein the Commission had committed an error, which is apparent on the face of record. Further that the Commission in Order dated 29.03.2022 in Petition No. 2 of 2022 with respect to the approval of the Mid-Term Review for Fourth MYT Control Period determination of tariff for FY 2023, True up of uncontrollable parameters of FY 2018-2019, FY 2019-2020 and FY 2020-2021 and True-up of controllable parameters of third MYT Control Period for HPSEBL under Sections 62, 64 and 86 of the Electricity Act, 2003 has duly dealt with the issue of wheeling charge for Renewable Generator wherein it is held as under:

"16.3 Wheeling Charges for Renewable Generator
16.3.1 In accordance with section 86(1)(e) read with section 61(h) of the Electricity Act, 2003, the Commission, for the promotion of renewable energy can provide suitable measures for connectivity with the grid. The small hydroelectric projects up to an installed capacity of 25 MW are covered under the renewable energy sources. In order to promote generation from these renewable sources, the Commission decides that the wheeling charges payable by the SHPs covered under renewable energy sources shall be comparable to the wheeling charges for the EHV category of open access Consumers for FY 2022-23. However, the renewable energy generator shall have to bear the losses as per the actual connected voltage level. These concessional wheeling charges shall not be available to the renewable generators selling power, under Renewable Energy Certificate (REC) framework, to the open access Consumers or in power exchange or bilateral sale outside the State or captive Consumers availing certain portion of power as captive power producers.
16.3.2 It is observed that as per Amended Hydro Power Policy of Govt. of Himachal Pradesh dated 15.05.2018, the GoHP has decided to waive off open access charges payable by hydro projects having capacity of up to 25 MW, which shall be commissioned after the date of notification i.e. 15.05.2018, for use of intrastate transmission network. It is clarified that the Petitioner shall be required to recover the wheeling charges from these generators as fixed by the Commission in this Order. Further, the

RE generators may claim the reimbursement of these charges from the GoHP as per the said notification."

17. The Respondent No. 2 in its separate reply has also averred that the Petition is neither maintainable in law nor on the facts as no new grounds have been made out by the Petitioner seeking review of the Order passed by the Commission. Further the power of review is not to be confused with the appellate powers which may enable an appellate Court to correct all matters of errors committed by the Subordinate court. Further the review can be exercised for correction of a mistake but not to substitute a view but in the present review Petition, in each and every paragraph, the Petitioner had mentioned that a wrong order has been passed by the Commission and the law on the point has not been appreciated and all the grounds made by the Petitioner in the present review Petition are akin to the appellate grounds, as such, the instant review Petition is liable to be dismissed. Further that there are no errors apparent on the face of record in the impugned order and the finality attached to the order cannot be disturbed. Also the review Petition is sheer misuse of the process of law in as much that under the garb of the review Petition, the Petitioner is seeking the relief from the Commission which only the appellate Court can grant and that the rehearing of matter is impermissible in review.

18. On merits, the contents of Petition have been denied averring that the review Petition is gross misuse of the process of law in as much as that the Petitioner has failed to make out any case for review of Order dated 13.02.2023. Further the Petitioner has failed to point out any error apparent on the face of record and that the Commission has passed a well- reasoned and speaking order by appreciating available material on record and the law and the grounds mentioned in the Petition are the repetition of the grounds of the Petition No. 33 of 2022. Further the 'Inter-connection Point' of the review Petitioner is at Urni and for the interim arrangement, the review Petitioner had entered into an agreement with Respondent No. 1 agreeing to pay transmission charges @ 14 paise per unit with open eyes and without any kind of pressure. Further that the replying Respondent has not denied to bear the burden of the transmission charges in case the power is delivered at the Permanent Inter-connection Point at Urni. Further, that the reliance placed upon the Order dated 06.07.2012 in Petition No. 137/2011 is totally misplaced.

19. In rejoinder, the contents of the reply of Respondent No. 1 have been denied and those of the Petition have been reaffirmed.

20. We have heard Sh. L.S. Mehta Ld. Counsel for the Review Petitioner, Sh. Vikas Chauhan Ld. Counsel for Respondent No. 1, Ms. Vandana Thakur Ld. Counsel and Sh. Kamlesh Saklani Authorised

Representative for Respondent No. 2 and Sh. Shanti Swaroop Ld. Legal Consultant for Respondent No. 3.

21. Sh. L.S. Mehta, Ld. Counsel for the Petitioner has submitted, inter alia, that the Commission has failed to take cognizance of Order dated 28.09.2022 in Petition No. 29 of 2022 as also MYT Order dated 26.08.2020 determining the tariff for Open Access usage customers in respect of Kashang Bhaba line and that the Petitioner had signed the Interim Power Transmission Agreement dated 05.02.2018 under compulsion as permanent evacuation system at Urni was not available and that the Commission has committed an error in not appreciating the delay on the part of Respondent No. 1 in providing permanent evacuation to the Petitioner at Urni Sub-station in time despite charging the switching station at Urni with the power of the Petitioner and that the Commission has made an error while interpreting Inter-connection Point and that the Commission has not interpreted Clause B of IPTA and the definition of Inter-connection facility in its proper perspective. As per him, there are errors apparent on the face of record in the impugned Order dated 13.02.2023 and, therefore, there are sufficient reasons for reviewing said Order dated 13.02.2023.

22. Sh. Vikas Chauhan, Ld. Counsel for Respondent No. 1, on the other hand has contended that the Commission has considered each and every aspect of the matter on the basis of record and there are no errors

apparent on the face of record but the Petitioner is seeking indulgence of the Commission to review its Order by reiterating almost the same averments, which had been made in the main Petition and intends to seek the relief which is within the perview of the Appellate Court.

23. Ms. Vandana Thakur, Ld. Counsel and Sh. Kamlesh Saklani, Authorised Representative for Respondent No. 2, on the other hand have submitted that the Review Petition is gross misuse of the process of law in as much as that the Petitioner has failed to make out any case for review of Order dated 13.02.2023. It is also submitted that the Petitioner has failed to point out any error apparent on the face of record warranting review. They have also submitted that the grounds made out by the Petitioner for seeking review are almost similar to the grounds made in the Petition No. 33 of 2022 and has misconstrued the Permanent Inter-connection Point with Interim Inter-connection Point which was only up till the commissioning of Permanent Inter- connection Facility at Urni. They have also submitted that the Order dated 06.07.2022 passed in Petition No. 137 of 2011 has no relevance to the facts and circumstances of the case.

24. We have carefully gone through the submissions including the written submissions filed by the Petitioner and have also perused the record carefully.

25. The Petitioner has sought the review mainly on the grounds that the Commission has not considered that the Petitioner has not availed Open Access and under the REC Mechanism, the transmission charges are not applicable where power is being supplied at APPC rate and that the Commission has committed an error by observing that there is no document on record that the Respondent No. 2/HPSEBL has agreed to receive power from the premises of the power house of the Project of the Petitioner, which is being supplied per approved PPA. Further, the findings that the Petitioner is liable to pay the transmission charges as per IPTA (Interim Power Transmission Agreement) are completely beyond and contrary to the conditions of the IPTA dated 05.02.2018 and that the Commission has committed an error in applying two different principles on transmission charges during sale of power to Respondent No.2/HPSEBL at the Permanent Inter-connection Point i.e. Designated Urni Sub-Station where no transmission charges are required to be paid by the petitioner and during interim arrangement, while connecting at Tower No. 61 Inter-connection Point on Kashang-Bhabha Line, where Transmission Charges @ 14 Paisa per unit are demanded by the Respondent No.1 and that the Commission has failed to consider and examine that there is nothing as Permanent or Temporary Inter-connection Point and since the Respondent No. 1 / HPPTCL could not make the designated Urni Sub-station available, the power had to be evacuated by alternate means and

it does not make any difference whether the power is supplied or taken at Permanent Inter-connection Point i.e. Urni Sub-station or the alternate Inter-connection Point at Tower No. 61 and the moot point is that the power is injected in the Grid and, hence, Tower No. 61 remains as the 'Designated Interconnection Point' and beyond that, the transmission charges, if any, are to be borne by Respondent No. 2, which is receiving the power at the said Point.

26. Under Section 94 of the Electricity Act, 2003 read with Section 114 and order 47 Rule I of the Code of Civil Procedure, 1908, the Commission has the powers to review its own order in order to prevent miscarriage of justice or to correct grave and palpable errors committed by it. However, there are definitive limits to exercise the power of review which may be exercised only on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found or it may also be exercised on any analogous ground. However, the power of review may not be exercised on the ground that the decision was erroneous on merits which is the domain of the court of appeal. Therefore, the power of review is not to be confused with the appellate power which may enable an appellate court to correct all manner of errors committed by the

subordinate court. 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 error is far from self-evident and has to be established by lengthy and complicated arguments, such an error cannot be cured in a review. Under Order 47 Rule I of the Code of Civil Procedure, 1908 while exercising the powers of review, it is not permissible for an erroneous decision to be reheard and corrected.

27. The scope and ambit of the power of review was elaborately considered by the Hon'ble Supreme Court in case titled as **Ram Sahu (Dead) through L.Rs and Others Vs. Vinod Kumar Rawat and Others MANU/SC/0821/2020** wherein it is held in paras 6, 7 and 8 as under:

"In the case of Haridas Das vs. Usha Rani Banik (Smt.) and Others,(2006) 4SCC 78 while considering the scope and ambit of Section 114 CPC read with Order 47 Rule 1 CPC it is observed and held in paragraph 14 to 18 as under:

"14. In Meera Bhanja v. Nirmala Kumari Choudhary (1995) 1 SCC 170 it was held that:

"8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. In connection with the limitation of the powers of the court under Order 47 Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders Under Article 226 of the Constitution, this Court, in Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, (1979) 4 SCC 389 speaking through Chinnappa Reddy J. has made the following pertinent observations:

'It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and

palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found, it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court.'

15. A perusal of Order 47 Rule 1 shows that review of a judgment or an order could be sought: (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the Applicant; (b) such important matter or evidence could not be produced by the Applicant at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of the record or any other sufficient reason.

16. In Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, AIR 1979 SC 1047, this Court held that there are definite limits to the exercise of power of review. In that case, an application under Order 47 Rule 1 read with Section 151 of the Code was filed which was allowed and the order passed by the Judicial Commissioner was set aside and the writ petition was dismissed. On an appeal to this Court it was held as under: (SCC P, 390, para 3)

"It is true as observed by this Court in Shivdeo Singh v. State of Punjab, AIR 1963 SC 1909 there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matters or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be

the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."

17. The Judgement in Aribam case has been followed in Meera Bhanja. In that case, it has been reiterated that an error apparent on the face of the record for 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 Satyanarayan Laxinarayan Hegde v. Millikarjun Bhavanappa Triumale, AIR 1960 SC 137 were 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."

18. It is also pertinent to mention the observations of this Court in Parsion Devi v. Sumitri Devi, (1997) 8 SCC 715. Relying upon the judgments in Aribam and Meera Bhanja it was observed as under:

"9. Under Order 47 Rule 1 CPC a judgment may be open to review interalia 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 proves 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 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 of 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'."

6.2 In the case of Lily Thomas vs. Union of India, (2000) 6 SC 224, it is observed and held that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power.

It is further observed in the said decision that the words "any other sufficient reason" appearing in Order 47 Rule 1 CPC must mean "a reason sufficient on grounds at least analogous to those specified in the rule" as was held in Chhajju Ram vs. Neki, AIR 1922 PC 112 and approved by this Court in Moran Mar Basselios Catholicos vs Most Rev. Mar Poulose Athanasius, AIR 1954 SC 526.12.3 In the case of

Inderchand Jain vs. Motilal, (2009) 14 SCC 663 in paragraphs 7 to 11 it is observed and held as under:

> *7. Section 114 of the Code of Civil Procedure (for short "the Code") provides for a substantive power of review by a civil court and consequently by the appellate courts. The words "subject as aforesaid" occurring in Section 114 of the Code mean subject to such conditions and limitations as may be prescribed as appearing in Section 113 thereof and for the said purpose, the procedural conditions contained in Order 47 of the Code must be taken into consideration. Section 114 of the Code although does not prescribe any limitation on the power of the court but such limitations have been provided for in Order 47 of the Code; Rule 1 whereof reads as under:*
>
> > *"17. The power of a civil court to review its judgment/decision is traceable in Section 114 CPC. The grounds on which review can be sought are enumerated in Order 47 Rule 1 CPC, which reads as under:*
> >
> > *'1. Application for review of judgment.—(1) Any person considering himself aggrieved—*
> >
> > *(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,*
> >
> > *(b) by a decree or order from which no appeal is allowed, or*
> >
> > *(c) by a decision on a reference from a Court of Small Causes, and who, from the 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 by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment of the court which passed the decree or made the order.' "*
> >
> > *8. An application for review would lie inter alia when the order suffers from an error apparent on the face of the record and permitting the same to continue would lead to failure of justice. In Rajendra Kumar v. Rambai this Court held: (SCC p. 514, para 6)*
> >
> > > *"6. The limitations on exercise of the power of review are well settled. The first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to*

failure of justice. In the absence of any such error, finality attached to the judgment/order cannot be disturbed."

9. The power of review can also be exercised by the court in the event discovery of new and important matter or evidence takes place which despite exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the order was made. An application for review would also lie if the order has been passed on account of some mistake. Furthermore, an application for review shall also lie for any other sufficient reason.

10. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.

11. Review is not appeal in disguise. In Lily Thomas v. Union of India this Court held: (SCC p. 251, para 56)

"56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise."

7. The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the review is the creation of a statute. In the case of Patel Narshi Thakershi vs. Pradyumansinghji Arjunsinghji, (1971) 3 SCC 844, this Court has held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise.

8. What can be said to be an error apparent on the face of the proceedings has been dealt with and considered by this Court in the case of T.C. Basappa vs. T.Nagappa, AIR 1954 SC 440. It is held that such an error is an error which is a patent error and not a mere wrong decision. In the case of Hari Vishnu Kamath vs. Ahmad Ishaque, AIR 1955 SC 233, it is observed as under:

"It is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter,

however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record? Learned counsel on either side were unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated."

8.1 In the case of Parsion Devi vs. Sumitri Devi, (Supra) in paragraph 7 to 9 it is observed and held as under:

7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In Thungabhadra Industries Ltd. v. Govt. of A.P., AIR 1964 SC 1372 this Court opined:

"What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an 'error apparent on the face of the record'). The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an 'error apparent on the face of the record', for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by 'error apparent'. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error."

8. Again, in Meera Bhanja v. Nirmala Kumari Choudhury, (1995) 1 SCC 170 while quoting with approval a passage from Aribam Tuleshwar Sharma v. Aribam Pishak Sharma (supra) this Court once again held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

9. Under Order 47 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 47 Rule 1 CPC. In exercise of the jurisdiction

under Order 47 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".

8.2 In the case of State of West Bengal and Others vs. Kamal Sengupta and Anr., (2008) 8 SCC 612, this Court had an occasion to consider what can be said to be "mistake or error apparent on the face of record". In para 22 to 35 it is observed and held as under:

"22. The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.

23. We may now notice some of the judicial precedents in which Section 114 read with Order 47 Rule 1 CPC and/or Section 22(3)(f) of the Act have been interpreted and limitations on the power of the civil court/tribunal to review its judgment/decision have been identified.

24. In Rajah Kotagiri Venkata Subbamma Rao v. Rajah Vellanki Venkatrama Rao (1899-1900) 27 IA 197 the Privy Council interpreted Sections 206 and 623 of the Civil Procedure Code and observed: (IA p.205)

> *"… Section 623 enables any of the parties to apply for a review of any decree on the discovery of new and important matter and evidence, which was not within his knowledge, or could not be produced by him at the time the decree was passed, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason. It is not necessary to decide in this case whether the latter words should be confined to reasons strictly ejusdem generic with those enumerated, as was held in Roy Meghraj v. Beejoy Gobind Burral, ILR (1875) 1 Cal 197. In the opinion of Their Lordships, the ground of amendment*

must at any rate be something which existed at the date of the decree, and the section does not authorise the review of a decree which was right when it was made on the ground of the happening of some subsequent event."

(emphasis added)

25. In Hari Sankar Pal v. Anath Nath Mitter, 1949 FCR 36 a five-Judge Bench of the Federal Court while considering the question whether the Calcutta High Court was justified in not granting relief to non-appealing party, whose position was similar to that of the successful appellant, held: (FCR p. 48)

"That a decision is erroneous in law is certainly no ground for ordering review. If the court has decided a point and decided it erroneously, the error could not be one apparent on the face of the record or even analogous to it. When, however, the court disposes of a case without adverting to or applying its mind to a provision of law which gives it jurisdiction to act in a particular way, that may amount to an error analogous to one apparent on the face of the record sufficient to bring the case within the purview of Order 47 Rule 1, Civil Procedure Code."

26. In Moran Mar Basselios Catholicos v. Mar Poulose Athanasius (supra) this Court interpreted the provisions contained in the Travancore Code of Civil Procedure which are analogous to Order 47 Rule 1 and observed:

"32. … Under the provisions in the Travancore Code of Civil Procedure which is similar in terms to Order 47 Rule 1 of our Code of Civil Procedure, 1908, the court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein.

It may allow a review on three specified grounds, namely, (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of the record and (iii) for any other sufficient reason.

It has been held by the Judicial Committee that the words 'any other sufficient reason' must mean 'a reason sufficient on grounds, least analogous to those specified in the rule'."

27. In Thungabhadra Industries Ltd. v. Govt. of A.P. (supra) it was held that a review is by no means an appeal in disguise whereof an erroneous decision can be corrected.

28. In Parsion Devi v. Sumitri Devi (Supra) it was held as under: (SCC p. 716)

"Under Order 47 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 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be 'reheard and corrected'. There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be 'an appeal in disguise'."

29. In Haridas Das v. Usha Rani Banik, (supra) this Court made a reference to the Explanation added to Order 47 by the Code of Civil Procedure (Amendment) Act, 1976 and held:

"13. In order to appreciate the scope of a review, Section 114 CPC has to be read, but this section does not even adumbrate the ambit of interference expected of the court since it merely states that it 'may make such order thereon as it thinks fit'. The parameters are prescribed in Order 47 CPC and for the purposes of this lis, permit the defendant to press for a rehearing 'on account of some mistake or error apparent on the face of the records or for any other sufficient reason'. The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the court and thereby enjoyed a favourable verdict. This is amply evident from the Explanation to Rule 1 of Order 47 which states that the fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment. Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the court should exercise the power to review its order with the greatest circumspection."

30. In Aribam Tuleshwar Sharma v. Aribam Pishak Sharma (Supra) this Court considered the scope of the High Courts' power to review an order passed under Article 226 of the Constitution, referred to an earlier decision in Shivdeo Singh v. State of Punjab (Supra) and observed: (Aribam Tuleshwar case (Supra), SCC p. 390, para 3)

> *"3. … It is true as observed by this Court in Shivdeo Singh v. State of Punjab (Supra), there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."*

31. In K. Ajit Babu v. Union of India, (1997) 6 SCC 473, it was held that even though Order 47 Rule 1 is strictly not applicable to the tribunals, the principles contained therein have to be extended to them, else there would be no limitation on the power of review and there would be no certainty or finality of a decision. A slightly different view was expressed in Gopabandhu Biswal v. Krishna Chandra Mohanty, (1998) 4 SCC 447). In that case it was held that the power of review granted to the tribunals is similar to the power of a civil court under Order 47 Rule 1.

32. In Ajit Kumar Rath v. State of Orissa, (1999) 9 SCC 596, this Court reiterated that power of review vested in the Tribunal is similar to the one conferred upon a civil court and held: (SCC p. 608, paras 30-31)

> *"30. The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in*

by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the 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 by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression 'any other sufficient reason' used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the Rule.

31. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment."

33. In State of Haryana v. M.P. Mohla, (2007) 1 SCC 457 this Court held as under: (SCC pp. 465-66, para 27)

"27. A review petition filed by the appellants herein was not maintainable. There was no error apparent on the face of the record. The effect of a judgment may have to be considered afresh in a separate proceeding having regard to the subsequent cause of action which might have arisen but the same by itself may not be a ground for filing an application for review."

34. In Gopal Singh v. State Cadre Forest Officers' Assn., (2007) 9 SCC 369 this Court held that after rejecting the original application filed by the appellant, there was no justification for the Tribunal to review its order and allow the revision of the appellant. Some of the observations made in that judgment are extracted below: (SCC p. 387, para 40)

"40. The learned counsel for the State also pointed out that there was no necessity whatsoever on the part of the Tribunal to review its own judgment. Even after the microscopic examination of the judgment of the Tribunal we could not find a single reason in the whole judgment as to how the review was justified and for what reasons. No apparent error on the face of the record was pointed, nor was it discussed.

> *Thereby the Tribunal sat as an appellate authority over its own judgment. This was completely impermissible and we agree with the High Court (Sinha, J.) that the Tribunal has travelled out of its jurisdiction to write a second order in the name of reviewing its own judgment. In fact the learned counsel for the appellant did not address us on this very vital aspect."*

28. A careful perusal of the review Petition shows that the Petitioner has reiterated almost the same facts and grounds which had been mentioned and alleged in the main Petition No. 33 of 2022. The Commission has considered each and every aspects of the matter in detail and has given its findings on merits while disposing off the Petition vide Order dated 13.02.2023. Almost the same grounds have been raised now in this Petition. It appears that the Petitioner has misconstrued the Permanent Inter-connection Point with the Temporary Inter-connection Point as the Temporary Inter-connection Point at Tower No. 61 had been provided to the Petitioner for evacuation of Power only during the construction of Permanent Inter-connection Point at Urni, which could not be completed in time due to the circumstances beyond the control of Respondent No. 1. Therefore, merely because there was delay on the part of Respondent No. 1 in construction of the Permanent Inter-connection Point at Urni, the Temporary Inter-connection Point at Tower No. 61 does not become and assume the status of the Permanent Inter-connection Point, which is at Sub-station Urni for all intent and purposes. The Petitioner in the various grounds in the present Petition has pointed

out several infirmities in the impugned Order dated 13.02.2023, for which the Petitioner was at liberty to approach the Hon'ble Appellate Court but under the garb of review, the Petitioner cannot make this Commission to re-hear the matter and substitute a view. Hence, the law laid down aforesaid by the Hon'ble Supreme Court is squarely applicable to the facts and circumstances of the present matter.

29. Significantly, it is observed that the Petitioner in its written submissions has raised almost a new ground that the IPTA dated 05.02.2018 was signed by it under compulsion which was never mentioned/raised in the main Petition. Once the Petitioner has voluntarily signed the agreement dated 05.02.2018 and has made part payment of the transmission charges on the basis of the said agreement upto May 2020, it does not lie in the mouth of Petitioner at this stage in a review Petition to state that the agreement dated 05.02.2018 had been signed under compulsion. A few other averments/grounds have also been made in the Review Petition which were not there in the main Petition, which is not permissible in a review.

30. The Commission has dealt each and every aspect of the matter in detail and the Petitioner has miserably failed to point out that there is an error on the face of record justifying the review of impugned Order dated 13.02.2023 passed by the Commission in Petition No. 33 of 2022. Similarly, the Petitioner has failed to point out discovery of any new and

important matter or evidence which after exercise of due diligence was not within its knowledge or could not be produced at the time when Order dated 13.02.2023 was made or there is any sufficient reason warranting review.

31. In view of the foregoing discussion and limited scope of review jurisdiction, we are of the view that there are no merits in the Review Petition. Thus, the present Review Petition deserves dismissal and accordingly the same is dismissed.

The file after needful be consigned to records.

Announced
15.05.2023

-Sd-	**-Sd-**
(Yashwant Singh Chogal)	**(Devendra Kumar Sharma)**
Member(Law)	**Chairman**