BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION SHIMLA

Review Petition No: 78 of 2022
Instituted on: 29.10.2022
Heard on: 22.03.2023
Decided on: 15.05.2023

CORAM

DEVENDRA KUMAR SHARMA
CHAIRMAN

YASHWANT SINGH CHOGAL
MEMBER (Law)

SHASHI KANT JOSHI
MEMBER

In the matter of :

The HP Power Transmission Corporation Limited through its,
Managing Director,
Himfed Bhawan, Panjari, Near ISBT,
Shimla-171004. ……..**Petitioner**

Versus

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

Petition under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 63 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 seeking review of the order dated 01.11.2021 passed by the Commission.

Present:

For the Petitioner: Sh. Tapan Kumar, Tariff Consultant for the Petitioner.

For the Respondent: Ms. Vandana Thakur, Ld. Vice Counsel for the Respondent.

ORDER

This Petition has been filed by the Petitioner under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 63 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 including its amendments seeking review of the order dated 01.11.2021 passed by the Commission in Petition No. 98 of 2020. As per the Petitioner, after going through the approval of tariff for Karian Transmission System, approved by the Commission on 01.11.2021, the Petitioner approached the Hon'ble Central Electricity Regulatory Commission (CERC for short) by filing Petition No. 5/MP/2022 for inclusion of Karian-Rajera Transmission System under PoC Mechanism for recovery of transmission charges under the CERC (Sharing of Inter-state transmission charges) and losses Regulations, 2020 (CERC Sharing Regulations, 2020 for short) .

2. It is averred that a significant time was consumed in finalizing the implications of the Order dated 01.11.2021 and opinion was also sought from Tariff Consultant regarding filing of review Petition who suggested on 06.04.2022 that the review may be filed against the Order dated 01.11.2021 in Petition No. 98 of 2020 for claiming the re-commissioning charges.

3. It is averred that the Petitioner had filed Petition No. 98 of 2020 before the Commission seeking approval of Capital Cost and determination of tariff for the period starting from CoD i.e. 12.05.2018 to FY 2023-2024 for 33/220 kV GIS Sub-station at Karian alongwith 220 kV Transmission line to PGCIL Pooling Sub-station at Chamera-II. Additional submissions and clarifications were also filed before the Commission and the Commission Vide Order dated 01.11.2021 disposed of the Petition. A summary of the capital cost as claimed vis-à-vis as approved by the Commission Vide Order dated 01.11.2021 is as under:-

Particulars	Claimed (Rs. Lakh)	Approved (Rs. Lakh)
Capital cost as on CoD: 12.05.2018		
220 kV D/C Transmission Line to PGCIL Pooling Sub-station at Chamera-II		
Land Acquisition Cost	137.43	137.43
Preliminary Works	18.64	18.64
Materials and Supplies	298.72	298.72
Erection and Civil Works	314.79	314.79
Overheads	247.80	122.73
Establishment	*117.08*	*67.49*
IDC	*130.72*	*55.24*
Total	**1017.38**	**892.31**
33/220kV GIS Sub-station at Karian		
Land Acquisition Cost	1.45	1.45
Preliminary Works	16.33	16.33
Materials and Supplies	2402.78	2402.78
Erection and Civil Works	556.06	556.06
Recommissioning Charges	135.70	-
Entry Tax	120.00	120.00
Overheads	937.42	601.82
Establishment	*271.06*	*271.06*
IDC	*666.36*	*330.76*
Total	**4169.74**	**3698.44**

4. It is averred that though the Commission has approved capital cost and determined the final tariff for the Sub-station alongwith Transmission Line but the Commission has not fully allowed the claim of the Petitioner and has reduced the Capital Cost as claimed by the Petitioner and has disallowed the re-commissioning charges of Rs. 1.36 Crore in Para 8.2 as under:

> *"3.5.33 Amongst the break-up provided an amount of INR 135.70 lakh is reflected towards re-commissioning charges as part of the total capital cost of the sub-station. It is observed that while the sub-station was completed in June 2013, it could not be energised/commissioned as the connecting transmission line was delayed. On completion of work and commissioning of transmission line, the sub-station was required to be re-commissioned against which the Petitioner had to pay additional costs to M/s Siemens Ltd. as re-commissioning charges. The Commission is of the opinion that since Karian- Rajera was an associated line, the Petitioner should have ensured simultaneous commissioning of the line and sub-station. Further, the delay in commissioning of the transmission line was primarily due to delay on contractor end which could have been avoided if the Petitioner would have undertaken timely steps for such delay.*
>
> *3.5.34 Therefore, the Commission believes that the additional burden cannot be passed in the approved capital cost for the project and disallows the re-commissioning charges claimed as part of overall project cost by Petitioner."*

5. It is averred that the Commission while approving the time overrun has rightly taken cognizance to the fact that the delay in energizing of Sub-station was on account of delay in commissioning of Transmission Line which has been delayed on account of various uncontrollable Force Majeure events as well as controllable events such as delay in getting approval from MoEF, RoW issues, bad weather conditions and slow

progress in construction by the contractor. Further, the Commission while approving the IDC has given due consideration to various Force Majeure events leading to Time Overrun and has held as under:-

*"3.6.14 Based on reasons stated by the Petitioner, **while part of the delay could be considered under force majeure**, delay on part of contractor is not of uncontrollable nature and therefore cannot be allowed in the overall capital cost. **The Commission therefore decided to allow sharing of excess amount of IDC between the Petitioner and beneficiaries in equal ratio (50:50)**."*

6. It is also mentioned that though the Commission has rightly allowed delay and consequential IDC yet similar treatment with regard to re-commissioning charges has not been given and this aspect has got overlooked due to inadvertence. It is also averred that even if the reasons of delay as concluded by the Commission are ignored, the delay on account of Force Majeure alone would have warranted re-commissioning and, therefore, instead of partial allowance, the entire charges of Re-commissioning are required to be allowed.

7. It is averred that the Hon'ble APTEL vide Judgment dated 27.04.2011 in Appeal No. 72 of 2010 has held as under:-

" 7.4 (iii) situation not covered by (i) & (ii) above.
*In our opinion…….In the third case the **additional cost due to time overrun including the LDs and insurance proceeds could be shared between the generating company and the consumer."***

8. It is averred that the Liquidated Damages of Rs. 27.59 Lakh on account of slow pace of work were levied on M/s Case Cold Roll Forming Ltd. and the Commission while approving the Hard Cost for the Transmission Line has adjusted the entire LD collected from the Contractor in the Hard Cost. However, the Petitioner has neither received the relaxation in the treatment of LD nor the re-commissioning charges (Additional charges) have been approved in line with the aforesaid Judgment of the Hon'ble APTEL.

9. It has been prayed that Order dated 01.11.2021 be reviewed and re-commissioning charges of Rs. 1.36 Crore be allowed.

10. The Review Petition has been contested by filing reply that the Scheme for construction of 33/220 kV, 50/63 MVA GIS Sub-station at Karian and 220 kV connecting transmission line from Sub-station Karian to PGCIL Sub-station at Rajera was approved with an anticipated capacity of 250 MW which achieved COD on 12.05.2018. The aforesaid Sub-station and the line are being used to evacuate the power generated from Hydro generating stations within the State of Himachal Pradesh and further connected to PGCIL's 220 kV Pooling station at Rajera, evacuating power through PGCIL's Jalandhar line for Northern Grid. Also averred that the replying Respondent is long term purchaser of power from Dunali SHP (5.00 MW), Hul-II SHP (3.4 MW), Kurtha SHP (5.00

MW), Belij SHP (5.00 MW) and Belij-II SHP (3.5 MW) which have permanent interconnection point at 33/220 kV, 50/63 MVA, GIS Karian Sub-station and injecting power through ISTS to the Northern Grid. Further the replying Respondent has signed a Supplementary Transmission Service Agreement on 29.05.2018 in continuation of the Original TSA dated 10.02.2012 with HPPTCL to include 220 kV Karian Sub-station for evacuation of power from the aforesaid Projects beyond interconnection point.

11. It is averred that the Commission has approved the capital cost and determined the tariff for 33/220 kV 50/63 MVA GIS Sub-station at Karian as Rs. 3698.44 lakhs and 220 kV D/C line from Karian to Rajera upto PGCIL point as Rs. 892.31 Lakhs as per Order dated 01.11.2021 detailed as under:-

Particulars	**FY2018-19 (COD on 12.05.2018)**	**FY 2019-20**	**FY 2020-21**	**FY 2021-22**	**FY 2022-23**	**FY 2023-24**
Depreciation	182.28	208.39	217.34	233.90	244.57	244.57
Interest on Loan	370.59	402.09	377.45	385.52	380.85	355.17
RoE	59.24	67.70	70.51	75.72	79.07	79.07
O&M Expenses	128.61	149.97	155.21	160.70	166.30	172.16
Interest on Working Capital	18.69	19.92	18.49	17.89	18.26	18.05
ARR*	**759.41**	**848.07**	**839.00**	**873.73**	**889.05**	**869.02**

12. It is averred that the aforesaid system upto PGCIL point at Chamera-II is part of ISTS and HPPTCL has already filed a Petition No.

5/MP/2022 before the Hon'ble CERC for inclusion of said asset for recovery of approved ARR through PoC Mechanism by CTUIL in terms of CERC Sharing Regulations, 2020 as per the direction at para 4.8.2 and 4.8.4 of the Order dated 01.11.2021.

13. It is also averred that the scope of the review Petition is very limited which can be granted only in case of clerical omission, mistake, or the like grave error and review cannot be exercised on the ground that the decision was erroneous on merits, but simultaneously, the material on record, which on proper consideration may justify the claim, cannot be ignored. According to the replying Respondent, the re-commissioning charges as claimed may be considered at the time of True-up and the Commission in Para 3.5.33 and the 3.5.34 of Order dated 01.11.2021 in Petition No. 98 of 2020 has rightly observed as under:-

"3.5.33 Amongst the break-up provided an amount of INR 135.70 lakh is reflected towards re-commissioning charges as part of the total capital cost of the sub-station. It is observed that while the sub-station was completed in June 2013, it could not be energised/commissioned as the connecting transmission line was delayed. On completion of work and commissioning of transmission line, the sub-station was required to be re-commissioned against which the Petitioner had to pay additional costs to M/s Siemens Ltd. as re-commissioning charges. The Commission is of the opinion that since Karian- Rajera was an associated line, the Petitioner should have ensured simultaneous commissioning of the line and sub-station. Further, the delay in

commissioning of the transmission line was primarily due to delay on contractor end which could have been avoided if the Petitioner would have undertaken timely steps for such delay.

3.5.34 Therefore, the Commission believes that the additional burden cannot be passed in the approved capital cost for the project and disallows the re-commissioning charges claimed as part of overall project cost by Petitioner."

13. It is also submitted that in Para 4.7.2 of the Tariff Order dated 01.11.2021 at Table 39, the approved ARR of the aforementioned asset from the date of commissioning to FY 2023-2024 has an inadvertent error in totaling as the ARR is the sum of all five components given in Table 39 which has not been correctly calculated which need to be corrected and, thus, no review except correction in table No. 39 is permissible.

14. In rejoinder, the contents of the reply have been denied and those of the Petition have been reaffirmed.

15. We have heard Sh. Tapan Kumar, Tariff Consultant for the Petitioner and Ms. Vandana Thakur, Ld. Vice Counsel for the Respondent and have perused the entire file carefully.

16. As the outset, it may be stated that 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.

17. 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."*
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> *(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."

18. A careful perusal of the Order dated 01.11.2021 shows that 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. The Petitioner in the various grounds in the present Petition has pointed out some infirmities in the impugned order 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.

19. As observed above 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 01.11.2021 passed by the Commission in Petition No. 98 of 2020. 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 01.11.2021 was made or there is any sufficient reason warranting review.

20. 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-**	**-Sd-**
(Shashi Kant Joshi)	**(Yashwant Singh Chogal)**	**(Devendra Kumar Sharma)**
Member	**Member (Law)**	**Chairman**