

Court-II

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

R.P. No. 5 of 2016 in A.No. 72 of 2015

Dated : 07th April, 2016

**Present : Hon'ble Mr. Justice Surendra Kumar, Judicial Member
Hon'ble Mr. I. J. Kapoor, Technical Member**

In the matter of:

**Salasar Steel and Power Ltd. ...Appellant(s)
Versus
Chhattisgarh State Power Distribution Co. Ltd. & Anr. ...Respondent(s)**

Counsel for the Appellant :
Counsel for the Respondent(s) :

ORDER

We have heard Mr. Sanjay Sen, learned Senior counsel, appearing for the Review Petitioner namely, the appellant/Salasar Steel and Power Ltd. The Review Petitioner/appellant has filed the instant Review Petition, being No.5 of 2016 in Appeal No.72 of 2015, seeking review of our judgment dated 17.02.2016 in the same appeal, being Appeal No.72 of 2015, captioned as *Salasar Steel and Power Ltd. Vs. Chhattisgarh State Power Distribution Co. Ltd. & Anr.* Mr. Sanjay Sen, has taken us through paragraph 14 of our judgment dated 17.02.2016, in the said appeal, which is quoted as under:

"14. The Appellant in the present Appeal prayed for quashing the Impugned Order dated 23.12.2014 passed by the State Commission and stated therein that in the event, this Tribunal of the view that the Appellant is liable to pay POC, then it should be billed on actual number of units consumed by the captive and non captive load of the Appellant."

2) Taking us through paragraph 14, Mr. Sanjay Sen's contention is that the issue of payment of Parallel Operation Charges (**POC**) was particularly raised and the said issue has not been decided while dismissing the appeal. The

methodology had escaped the attention of this Appellate Tribunal, hence, could not be decided and there is no finding on the methodology for POC.

- 3) In support of his contention, Mr. Sanjay Sen has cited, taking us through paragraph 15 of the reported judgment, which we quote as under:

“15. We are unable to countenance the argument advanced by Learned Additional Solicitor General appearing for the respondents. A careful perusal of the impugned judgment does not deal with decide many important issues as could be seen from the grounds of review and as raised in the grounds of special leave petition/appeal. The High Court, in our opinion, is not justified in ignoring the materials on record which on proper consideration may justify the claim of the appellant. Learned counsel for the appellant has also explained to this Court as to why the appellant could not place before the Division Bench some of these documents which were not in possession of the appellant at the time of hearing of the case. The High Court, in our opinion, is not correct in overlooking the documents relied on by the appellant and the respondents. In our opinion, review jurisdiction is available in the present case since the impugned judgment is a clear case of an error apparent on the face of the record and non-consideration of relevant documents. The appellant, in our opinion, has got a strong case in their favour and if the claim of the appellant in this appeal is not countenanced, the appellant will suffer immeasurable loss and injury. Law is well-settled that the power of judicial review of its own order by the High Court inheres in every court of plenary jurisdiction to prevent mis-carriage of justice.”

- 4) The facts of the reported case are quite different from the points in review before us and this proposition laid down by Hon'ble Supreme Court is not applicable to the present matter. Some additional document was to be produced in the reported matter on which point the Hon'ble Supreme Court had laid down the said law.
- 5) This Review Petition is today fixed for hearing on admission itself and hence, we have heard Mr. Sanjay Sen at length. We passed the aforesaid judgment in appeal running into 23 pages, dealing with every point raised at the bar and discussing in detail the facts and circumstances of the matter in hand. Mr. Sanjay Sen has filed a copy of the note of arguments, which is alleged to have been filed in the said appeal. A number of points are taken by learned counsel in the appeals and we cannot compel any counsel to press all the points, hence, we take quite caution while making noting on the arguments and while passing the judgment, the points really argued and emphasised. We have discussed the said point in our detailed judgment. Apart from that, after dismissing the merits of the matter, we have dismissed the appeal and we did not find any infirmity in the Impugned Order. The result of the dismissal is that all the points raised by the appellant are deemed to be rejected. Dismissing the appeal on merits and after considering the point raised in the Review Petition on which Mr. Sanjay Sen has laid emphasis, we find no substantial ground or any material, to again consider the methodology for billing of POC. Dismissal of the appeal means all the findings recorded in the Impugned Order have been affirmed. In consequence thereof the Review Petition is without merit and is liable to be dismissed and is accordingly dismissed.

(I. J. Kapoor)
Technical Member

(Justice Surendra Kumar)
Judicial Member

sh/dk