

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
AT NEW DELHI  
(APPELLATE JURISDICTION)**

**REVIEW PETITION NO.18 OF 2016  
IN  
APPEAL NO.188 OF 2015 AND IA NO.499 OF 2016**

**Dated: 18<sup>th</sup> October, 2016.**

**Present: Hon'ble Smt. Justice Ranjana P. Desai, Chairperson  
Hon'ble Shri T.Munikrishnan, Technical Member.**

**IN THE MATTER OF:**

**TORRENT POWER LIMITED** )  
*Incorporated under the Companies* )  
*Act, 1956* )  
Having its Registered Office At )  
Torrent House, Off Ashram Road )  
Ahmedabad – 380009, Gujarat ) ....Review  
Petitioner/  
Appellant

Versus

**1. U.P. ELECTRICITY** )  
**REGULATORY COMMISSION** )  
II Floor, Kisan Mandi Bhawan )  
Gomti Nagar, Vibhuti Khand, )  
Lucknow-226010. )  
**2. U.P. POWER CORPORATION** )  
**LIMITED** )  
Through its Chairman/Managing )  
Director, Shakti Bhawan, Ashok )  
Marg, Lucknow-226001. )

- 3. DAKSHINANCHAL VIDYUT** )  
**VITRAN NIGAM LIMITED** )  
 through its Managing Director, )  
 Urja Bhawan, )  
 NH-2 (Agra-Delhi Bypass Road), )  
 Sikandra, Agra-282007. )
- 4. RAMA SHANKAR AWASTHI** )  
 Son of (Late) Shri G.P. Awasthi )  
 Village Rithari, Post: Kurara, )  
 Dist: Hamirpur and present )  
 Residence, 301- Surabhi Deluxe )  
 Apartment, 6/7 Dali Bagh, )  
 Lucknow-226001. ) ....Respondent(s)

Counsel for the  
 Review Petitioner/  
 Appellant

... Mr. Ramji Srinivasan  
 Ms. Deepa Chauhan  
 Mr. Hardik Luthra  
 Mr. Chetan Bundela and  
 Mr. Tapan

Counsel for the  
 Respondent(s)

...Mr. C.K. Rai and  
 Mr. Paramhans for **R.1**

## **ORDER**

### **PER HON'BLE SHRI T. MUNIKRISHNAIAH, TECHNICAL MEMBER**

**1.** In this review petition, the review petitioner has sought review of the order dated 28/07/2016 passed by this Tribunal in Appeal No.188 of 2015.

**2.** We have heard Mr. Ramji Srinivasan, learned counsel appearing for the review petitioner. Counsel submitted that the

review petitioner had raised ground of lack of jurisdiction of the State Commission to entertain the petition filed by Respondent No.4 Mr. Rama Shankar Awasthi because it is in the nature of public interest litigation. Relevant judgements of the Supreme Court were cited but they have been mistakenly ignored. Mr. Ramji Srinivasan further submitted that this Tribunal has misread its own decision in **Amausi Industries Association & Ors. v. Uttar Pradesh Electricity Regulatory Commission & Ors**<sup>1</sup>. Counsel submitted that therefore the order dated 28/07/2016 needs to be reviewed.

**3.** Counsel for Respondent No.2 and 3 supported the review petitioner. Mr. Rai, learned counsel for the State Commission has on the other hand submitted that in the garb of seeking review of the judgment and order dated 28/07/2016 the review petitioner is trying to re-argue the matter which is not permissible. The review petition therefore deserves to be dismissed. In support of his submissions, counsel relied on **Meera Bhanja (Smt.) v. Nirmala Kumari Choudhury**

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<sup>1</sup> 2014 ELR (APTEL) 0362

**(Smt.)<sup>2</sup>, Parsion Devi & Ors. v. Sumitri Devi & Ors.**<sup>3</sup>

and **Kamlesh Verma v. Mayawati & Ors.**<sup>4</sup>

4. Before we go to the contentions of the parties it is necessary to refer to the summary of the principles underlying review jurisdiction noted by the Supreme Court **Kamlesh Verma** in on which reliance is placed by Mr. Rai. Following are the relevant paragraphs:

***“Summary of the principles.***

**20.** *Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:*

**20.1.** *When the review will be maintainable:*

(i) *Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;*

(ii) *Mistake or error apparent on the face of the record;*

(iii) *Any other sufficient reason.*

*The words “any other sufficient reason” have been interpreted in Chhajju Ram v. Neki<sup>18</sup> and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius (AIR 1954 SC 526), to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd. (2013) 8 SCC 337.*

<sup>2</sup> (1995) 1 SCC 170

<sup>3</sup> (1997) 8 SCC 715

<sup>4</sup> (2013) 8 SCC 320

**20.2. When the review will not be maintainable: -**

(i) *A repetition of old and overruled argument is not enough to reopen concluded adjudications.*

(ii) *Minor mistakes of inconsequential import.*

(iii) *Review proceedings cannot be equated with the original hearing of the case.*

(iv) *Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.*

(v) *A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.*

(vi) *The mere possibility of two views on the subject cannot be a ground for review.*

(vii) *The error apparent on the face of the record should not be an error which has to be fished out and searched.*

(viii) *The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.*

(ix) *Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."*

**5.** The point regarding jurisdiction on the ground that the State Commission cannot entertain a complaint in the nature of public interest litigation was raised before this Tribunal.

It was contented that the complaint filed by Respondent No.4 is in the nature of public interest litigation. This Tribunal applied its mind to the said submission and considered the judgement of the Supreme Court in **Maharashtra Electricity Regulatory Commission v. Reliance**<sup>5</sup> on which reliance was placed by the review petitioner. This Tribunal referred to other judgements delivered by it where it has referred to **Maharashtra Electricity Regulatory Commission** and held that the matter on hand is not a public interest litigation. Therefore, review petitioner is not right in contending that the Supreme Court judgement relied upon by the appellant has been mistakenly ignored.

6. The judgment and order dated 28/07/2016 cannot be reviewed on the ground of alleged misreading of judgment of this Tribunal in **Amausi Industries Association**. Even if this submission of the appellant is to be accepted it is not an error manifest on the face of the judgment and order dated 28/07/2016 undermining its soundness or resulting in miscarriage of justice (**Kamlesh Verma**). The appellant is trying to agitate a point which can be raised in an appeal. A review is by

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<sup>5</sup> (2007) 8 SCC 381

no means an appeal in disguise. In our opinion, therefore, no case is made out for review of the judgment. The review petition is, therefore, dismissed.

7. Pronounced in the open Court on this **18<sup>th</sup> day of October,2016.**

**T. Munikrishnaiah**  
**[Technical Member]**

**Justice Ranjana P. Desai**  
**[Chairperson]**

✓ **REPORTABLE/~~NON-REPORTABLE~~**