

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

**APPEAL NO.178 OF 2016 & IA NO.389 OF 2016**  
**APPEAL NO.179 OF 2016 & IA NO.390 OF 2016**  
**APPEAL NO.180 OF 2016 & IA NO.392 OF 2016**  
**APPEAL NO.181 OF 2016 & IA NO.394 OF 2016**

**APPEAL NO.183 OF 2016 & IA NO.396 OF 2016**  
**APPEAL NO.184 OF 2016 & IA NO.397 OF 2016**  
**APPEAL NO.185 OF 2016 & IA NO.399 OF 2016**  
**APPEAL NO.186 OF 2016 & IA NO.401 OF 2016**

**Dated: 30<sup>TH</sup> MARCH, 2017.**

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson  
Hon'ble Mr. I.J. Kapoor, Technical Member**

**APPEAL NO. 178 OF 2016 & IA No. 389 OF 2016**

**In the matter of:-**

**TORRENT POWER LIMITED )**  
Incorp. Under the Companies Act, )  
1956, Having its Registered Office at )  
Torrent House, Off Ashram Road, )  
Ahmedabad – 380009, Gujarat )       ...  
**Appellant(s)**

**AND**

1. **GUJARAT ELECTRICITY )  
REGULATORY COMMISSION, )**  
A Commission constituted under )  
the provisions of Repealed )  
Electricity Regulatory )  
Commissions, 1998, )  
Having its office at- )  
6<sup>th</sup> Floor, GIFT ONE )  
Road 5C, Zone 5, GIFT City, )  
Gandhinagar – 382355 )
  
2. **BIPINCHANDRA KANAIYALAL )  
JOSHI )**  
R/o Plot No. 912/2, Sector 13-B, )  
Gandhinagar, 3822355, GUJARAT )  
)
  
3. **AKHIL GUJARAT GRAHAK )  
SEWA KENDRA, )**  
KARAKA Street, Saraspur, )  
Ahmedabad – 380018 )
  
4. **SHRI H.J. PATEL (RETD. CE, )  
DGVCL), )**  
At & Po, Talavchara, Ta. Chikhli, )  
Dist. Navsari, Pin: 396529 )
  
5. **SHRI VIJAY PATEL )  
[Vijay411@yahoo.com](mailto:Vijay411@yahoo.com) )**
  
6. **CONSUMER EDUCATIONAND )  
RESEARCH SOCIETY, )**  
“Suraksha Sankool”, Sarkhej- )  
Gandhinagar Highway, Thaltej, )  
Ahmedabad – 380 054 )

7. **LAGHU UDYOG BHARATI- )**  
**GUJARAT )**  
307, Ashram Avenue, )  
Behind Kochrab Ashram, )  
Nr. Paldi Cross Road, Ellisbridge, )  
Ahmedabad – 380 006 )
8. **BHARATIYA SAMYAWADI )**  
**PAKSH (MARKSWADI) )**  
Mansukhbhai Nanjibhai )  
Khorasiya, )  
Shop No. 303, Arjun Complex, )  
Near Rupali Naher, Bhatar R oad, )  
Surat – 395007 )
9. **UTILITY USERS' WELFARE )**  
**ASSOCIATION (UUWA) )**  
Lakshmi Ginning Compound, )  
Opp. Union Co. Op. Bank Ltd., )  
Naroda, )  
Ahmedabad – 382330 )
10. **GUJARAT CHAMBER OF )**  
**COMMERCE & INDUSTRY )**  
Shri Ambica Mills Gujarat )  
Chamber Building, )  
P.O. Box No. 4045, Ashram Road, )  
Ahmedabad – 380009 )
11. **SHRI AMARSING CHAVDA, )**  
Heritage Bungalow, )  
Near Science City, )  
Ahmedabad – 380060 )  
Gujarat )
- ... **Respondents**

Counsel for the Appellant(s) :Mr. Ramji Srinivasan, Sr. Adv.  
Ms. Deepa Chawan  
Mr. Hardik Luthra  
Mr. Chetan Bandela  
Mr. Tapan  
Mr. Tushar Bhardwaj  
Mr. Vivek Paul Oriel

Counsel for the Respondent(s) :Mr. Sanjay Sen, Sr. Adv.  
Mr. Buddy A. Ranganadhan  
Mr. Hemant Singh  
Ms. Sikha Ohri  
Mr. Saahil Kaul  
Mr. Nimesh Kr. Jha a/w  
Mr. S.R. Pandey (Rep.) for  
**R.1**

Mr. Subhash Chandran for  
**R.8**

**APPEAL NO. 179 OF 2016 & IA NO. 390 OF 2016**  
**APPEAL NO. 184 OF 2016 & IA NO. 397 OF 2016**

**In the matter of:-**

**TORRENT POWER LIMITED** )  
Incorp. Under the Companies Act, )  
1956, Having its Registered Office at )  
Torrent House, Off Ashram Road, )  
Ahmedabad – 380009, Gujarat ) ...  
**Appellant(s)**

**AND**

1. **GUJARAT ELECTRICITY REGULATORY COMMISSION,** )  
A Commission constituted under )  
the provisions of Repealed )  
Electricity Regulatory )  
Commissions, 1998, )  
Having its office at- )  
6<sup>th</sup> Floor, GIFT ONE )  
Road 5C, Zone 5, GIFT City, )  
Gandhinagar – 382355 )
2. **GOVERNMENT OF GUJARAT** )  
Represented through )  
The Principal Secretary, )  
Energy Department, )  
Sachivalaya, Gandhinagar, )  
Gujarat – 382010 )
3. **AKHIL GUJARAT GRAHAK SEWA KENDRA,** )  
KARAKA Street, Saraspur, )  
Ahmedabad – 380018 )
4. **SHRI H.J. PATEL (RETD. CE, DGVCL),** )  
At & Po, Talavchara, Ta. Chikhli, )  
Dist. Navsari, Pin: 396529 )
5. **SHRI VIJAY PATEL** )  
[Vijay411@yahoo.com](mailto:Vijay411@yahoo.com) )
6. **CONSUMER EDUCATIONAND RESEARCH SOCIETY,** )  
“Suraksha Sankool”, Sarkhej- )  
Gandhinagar Highway, Thaltej, )  
Ahmedabad – 380 054 )

7. **LAGHU UDYOG BHARATI- )**  
**GUJARAT )**  
307, Ashram Avenue, )  
Behind Kochrab Ashram, )  
Nr. Paldi Cross Road, Ellisbridge, )  
Ahmedabad – 380 006 )
8. **BHARATIYA SAMYAWADI )**  
**PAKSH (MARKSWADI) )**  
Mansukhbhai Nanjibhai )  
Khorasiya, Shop No. 303, Arjun )  
Complex, Near Rupali Naher, )  
Bhatar Road, Surat – 395007 )
9. **UTILITY USERS' WELFARE )**  
**ASSOCIATION (UUWA) )**  
Lakshmi Ginning Compound, )  
Opp. Union Co. Op. Bank Ltd., )  
Naroda, Ahmedabad – 382330 )
10. **GUJARAT CHAMBER OF )**  
**COMMERCE & INDUSTRY )**  
Shri Ambica Mills Gujarat )  
Chamber Building, )  
P.O. Box No. 4045, Ashram Road, )  
Ahmedabad – 380009 )
11. **SHRI AMARSING CHAVDA, )**  
Heritage Bunglow, )  
Near Science City, )  
Ahmedabad – 380060 )  
Gujarat )

... **Respondents**

Counsel for the Appellant(s) :Mr. Ramji Srinivasan, Sr. Adv.  
Ms. Deepa Chawan  
Mr. Hardik Luthra  
Mr. Chetan Bandela  
Mr. Tapan  
Mr. Tushar Bhardwaj  
Mr. Vivek Paul Oriel

Counsel for the Respondent(s) :Mr. Sanjay Sen, Sr. Adv.  
Mr. Buddy A. Ranganadhan  
Mr. Hemant Singh  
Ms. Sikha Ohri  
Mr. Saahil Kaul  
Mr. Nimesh Kr. Jha a/w  
Mr. S.R. Pandey (Rep.) for  
**R.1**

Mr. M.G. Ramachandran  
Ms. Anushree Bardhan  
Ms. Poorva Saigal  
Mr. Shubham Arya for **R.2**

Mr. Subhash Chandran for  
**R.8**

**APPEAL NO.180 OF 2016 &IA NO. 392 OF 2016**

**In the matter of:-**

**TORRENT POWER LIMITED** )  
Incorp. Under the Companies Act, )  
1956, Having its Registered Office at )  
Torrent House, Off Ashram Road, )  
Ahmedabad – 380009, Gujarat ) ... **Appellant(s)**

**AND**

1. **GUJARAT ELECTRICITY )  
REGULATORY COMMISSION, )**  
A Commission constituted under )  
the provisions of Repealed )  
Electricity Regulatory )  
Commissions, 1998, )  
Having its office at- )  
6<sup>th</sup> Floor, GIFT ONE )  
Road 5C, Zone 5, GIFT City, )  
Gandhinagar – 382355 )
2. **SURAT CITIZENS' COUNCIL )  
TRUST )**  
A- 205-206, Tirupati Plaza, )  
2<sup>nd</sup> Floor, Nr. Collector Office, )  
Nanpura, Surat – 395 001 )
3. **SMT. BHAVNA BHASKAR )  
PATEL )**  
J 19, Ranchhodnagar, )  
Bodakdev, Vastrapur, )  
Ahmedabad – 380 054 )
4. **AKHIL GUJARAT GRAHAK )  
SEWA KENDRA, )**  
KARAKA Street, Saraspur, )  
Ahmedabad – 380018 )
5. **SHRI H.J. PATEL (RETD. CE, )  
DGVCL), )**  
At & Po, Talavchara, Ta. Chikhli, )  
Dist. Navsari, Pin: 396529 )
6. **SHRI VIJAY PATEL )  
[Vijay411@yahoo.com](mailto:Vijay411@yahoo.com) )**



7. **CONSUMER EDUCATIONAND )**  
**RESEARCH SOCIETY, )**  
“Suraksha Sankool”, Sarkhej- )  
Gandhinagar Highway, Thaltej, )  
Ahmedabad – 380 054 )
8. **LAGHU UDYOG BHARATI- )**  
**GUJARAT )**  
307, Ashram Avenue, )  
Behind Kochrab Ashram, )  
Nr. Paldi Cross Road, Ellisbridge, )  
Ahmedabad – 380 006 )
9. **BHARATIYA SAMYAWADI )**  
**PAKSH (MARKSWADI) )**  
Mansukhbhai Nanjibhai )  
Khorasiya, )  
Shop No. 303, Arjun Complex, )  
Near Rupali Naher, Bhatar Road, )  
Surat – 395007 )
10. **UTILITY USERS’ WELFARE )**  
**ASSOCIATION (UUWA) )**  
Lakshmi Ginning Compound, )  
Opp. Union Co. Op. Bank Ltd., )  
Naroda, )  
Ahmedabad – 382330 )
11. **GUJARAT CHAMBER OF )**  
**COMMERCE & INDUSTRY )**  
Shri Ambica Mills Gujarat )  
Chamber Building, P.O. Box No. )  
4045, Ashram Road, )  
Ahmedabad – 380009 )
12. **SHRI AMARSING CHAVDA, )**

Heritage Bungalow, )  
Near Science City, )  
Ahmedabad-380060 Gujarat. ) ... **Respondents**

Counsel for the Appellant(s) :Mr. Ramji Srinivasan, Sr. Adv.  
Ms. Deepa Chawan  
Mr. Hardik Luthra  
Mr. Chetan Bandela  
Mr. Tapan  
Mr. Tushar Bhardwaj  
Mr. Vivek Paul Oriel

Counsel for the Respondent(s) :Mr. Sanjay Sen, Sr. Adv.  
Mr. Buddy A. Ranganadhan  
Mr. Hemant Singh  
Ms. Sikha Ohri  
Mr. Saahil Kaul  
Mr. Nimesh Kr. Jha a/w  
Mr. S.R. Pandey (Rep.) for  
**R.1**

Mr. I.J. Desai for **R.2**

Mr. Subhash Chandran for  
**R.9**

**APPEAL NO. 181 OF 2016 & IA NO. 394 OF 2016**

**In the matter of:-**

**TORRENT POWER LIMITED** )  
Incorp. Under the Companies Act, )  
1956, Having its Registered Office at )  
Torrent House, Off Ashram Road, )  
Ahmedabad – 380009, Gujarat ) ... **Appellant(s)**

**AND**

1. **GUJARAT ELECTRICITY REGULATORY COMMISSION,** )  
A Commission constituted under )  
the provisions of Repealed )  
Electricity Regulatory )  
Commissions, 1998, )  
Having its office at- )  
6<sup>th</sup> Floor, GIFT ONE )  
Road 5C, Zone 5, GIFT City, )  
Gandhinagar – 382355 )
2. **SURAT CITIZENS' COUNCIL TRUST** )  
A- 205-206, Tirupati Plaza, )  
2<sup>nd</sup> Floor, Nr. Collector Office, )  
Nanpura, Surat – 395 001 )
3. **SHRI BRIJMOHANDAS N SHAH** )  
Jeevandeep Flats, Co-Op Housing )  
Society Ltd, )  
Sy. No. 1436/6-B,1<sup>st</sup> Floor )  
No.A/1, )  
Near Kadampalli Society, )  
Timaliawad, )  
Nanpura, Surat – 395 001 )
4. **AKHIL GUJARAT GRAHAK SEWA KENDRA,** )  
KARAKA Street, Saraspur, )  
Ahmedabad – 380018 )
5. **SHRI H.J. PATEL (RETD. CE, DGVCL),** )  
At & Po, Talavchara, Ta. Chikhli, )  
Dist. Navsari, Pin: 396529 )
6. **SHRI VIJAY PATEL** )

- [Vijay411@yahoo.com](mailto:Vijay411@yahoo.com) )
7. **CONSUMER EDUCATIONAND** )  
**RESEARCH SOCIETY,** )  
“Suraksha Sankool”, Sarkhej- )  
Gandhinagar Highway, )  
Thaltej, )  
Ahmedabad – 380 054 )
8. **LAGHU UDYOG BHARATI-** )  
**GUJARAT** )  
307, Ashram Avenue, )  
Behind Kochrab Ashram, )  
Nr. Paldi Cross Road, Ellisbridge, )  
Ahmedabad – 380 006 )
9. **BHARATIYA SAMYAWADI** )  
**PAKSH (MARKSWADI)** )  
Mansukhbhai Nanjibhai )  
Khorasiya, )  
Shop No. 303, Arjun Complex, )  
Near Rupali Naher, Bhatar Road, )  
Surat – 395007 )
10. **UTILITY USERS’ WELFARE** )  
**ASSOCIATION (UUWA)** )  
Lakshmi Ginning Compound, )  
Opp. Union Co. Op. Bank Ltd., )  
Naroda, Ahmedabad – 382330 )
11. **SHRI AMARSING CHAVDA,** )  
Heritage Bungalow, )  
Near Science City, )  
Ahmedabad – 380060 )  
Gujarat )
- ... **Respondents**

Counsel for the Appellant(s)

:Mr. Ramji Srinivasan, Sr. Adv.

Ms. Deepa Chawan  
Mr. Hardik Luthra  
Mr. Chetan Bandela  
Mr. Tapan  
Mr. Tushar Bhardwaj  
Mr. Vivek Paul Oriel

Counsel for the Respondent(s)

:Mr. Sanjay Sen, Sr. Adv.  
Mr. Buddy A. Ranganadhan  
Mr. Hemant Singh  
Ms. Sikha Ohri  
Mr. Saahil Kaul  
Mr. Nimesh Kr. Jha a/w  
Mr. S.R. Pandey (Rep.) for  
**R.1**

Mr. I.J. Desai for **R.2**

Mr. Subhash Chandran for  
**R.9**

**APPEAL NO. 183 OF 2016 & IA NO. 396 OF 2016**

**In the matter of:-**

**TORRENT POWER LIMITED** )  
Incorp. Under the Companies Act, )  
1956, Having its Registered Office at )  
Torrent House, Off Ashram Road, )  
Ahmedabad – 380009, Gujarat ) ... **Appellant(s)**

**AND**

1. **GUJARAT ELECTRICITY )**

- REGULATORY COMMISSION,** )  
A Commission constituted under )  
the provisions of Repealed )  
Electricity Regulatory )  
Commissions, 1998, )  
Having its office at- )  
6<sup>th</sup> Floor, GIFT ONE, Road 5C, )  
Zone 5, GIFT City, Gandhinagar – )  
382355 )
2. **BIPINCHANDRA KANAIYALAL** )  
**JOSHI** )  
R/o Plot No. 912/2, Sector 13-B, )  
Gandhinagar, )  
Gujarat – 382 013 )
3. **AKHIL GUJARAT GRAHAK** )  
**SEWA KENDRA,** )  
KARAKA Street, Saraspur, )  
Ahmedabad – 380018 )
4. **SHRI H.J. PATEL (RETD. CE,** )  
**DGVCL),** )  
At & Po, Talavchara, Ta. Chikhli, )  
Dist. Navsari, Pin: 396529 )
5. **SHRI VIJAY PATEL** )  
[Vijay411@yahoo.com](mailto:Vijay411@yahoo.com) )
6. **CONSUMER EDUCATIONAND** )  
**RESEARCH SOCIETY,** )  
“Suraksha Sankool”, Sarkhej- )  
Gandhinagar Highway, Thaltej, )  
Ahmedabad – 380 054 )
- )

- 
7. **LAGHU UDYOG BHARATI- )**  
**GUJARAT )**  
307, Ashram Avenue, )  
Behind Kochrab Ashram, )  
Nr. Paldi Cross Road, Ellisbridge, )  
Ahmedabad – 380 006 )
8. **BHARATIYA SAMYAWADI )**  
**PAKSH (MARKSWADI) )**  
Mansukhbhai Nanjibhai )  
Khorasiya, )  
Shop No. 303, Arjun Complex, )  
Near Rupali Naher, Bhatar Road, )  
Surat – 395007 )
9. **UTILITY USERS' WELFARE )**  
**ASSOCIATION (UUWA) )**  
Lakshmi Ginning Compound, )  
Opp. Union Co. Op. Bank Ltd., )  
Naroda, )  
Ahmedabad – 382330 )
10. **GUJARAT CHAMBER OF )**  
**COMMERCE & INDUSTRY )**  
Shri Ambica Mills Gujarat )  
Chamber Building, )  
P.O. Box No. 4045, Ashram Road, )  
Ahmedabad – 380009 )
11. **SHRI AMARSING CHAVDA, )**  
Heritage Bungalow, )  
Near Science City, )  
Ahmedabad – 380060 )  
Gujarat )
- ... **Respondents**

Counsel for the Appellant(s) :Mr. Ramji Srinivasan, Sr. Adv.  
Ms. Deepa Chawan  
Mr. Hardik Luthra  
Mr. Chetan Bandela  
Mr. Tapan  
Mr. Tushar Bhardwaj  
Mr. Vivek Paul Oriel

Counsel for the Respondent(s) :Mr. Sanjay Sen, Sr. Adv.  
Mr. Buddy A. Ranganadhan  
Mr. Hemant Singh  
Ms. Sikha Ohri  
Mr. Saahil Kaul  
Mr. Nimesh Kr. Jha a/w  
Mr. S.R. Pandey (Rep.) for  
**R.1**  
  
Mr. Subhash Chandran for  
**R.8**

**APPEAL NO. 185 OF 2016 & IA NO. 399 OF 2016**

**In the matter of:-**

**TORRENT POWER LIMITED** )  
Incorp. Under the Companies Act, )  
1956, Having its Registered Office at )  
Torrent House, Off Ashram Road, )  
Ahmedabad – 380009, Gujarat ) ... **Appellant(s)**

**AND**



1. **GUJARAT ELECTRICITY )  
REGULATORY COMMISSION, )**  
A Commission constituted under )  
the provisions of Repealed )  
Electricity Regulatory )  
Commissions, 1998, )  
Having its office at- )  
6<sup>th</sup> Floor, GIFT ONE )  
Road 5C, Zone 5, GIFT City, )  
Gandhinagar – 382355 )
  
2. **SURAT CITIZENS' COUNCIL )  
TRUST )**  
A- 205-206, Tirupati Plaza, )  
2<sup>nd</sup> Floor, Nr. Collector Office, )  
Nanpura, Surat – 395 001 )
  
3. **SMT. BHAVNA BHASKAR )  
PATEL )**  
J 19, Ranchhodnagar, Bodakdev, )  
Vastrapur, Ahmedabad – 380 054 )
  
4. **AKHIL GUJARAT GRAHAK )  
SEWA KENDRA, )**  
KARAKA Street, Saraspur, )  
Ahmedabad – 380018 )
  
5. **SHRI H.J. PATEL (RETD. CE, )  
DGVCL), )**  
At & Po, Talavchara, Ta. Chikhli, )  
Dist. Navsari, Pin: 396529 )
  
6. **SHRI VIJAY PATEL )  
[Vijay411@yahoo.com](mailto:Vijay411@yahoo.com) )**

7. **CONSUMER EDUCATIONAND )**  
**RESEARCH SOCIETY, )**  
“Suraksha Sankool”, Sarkhej- )  
Gandhinagar Highway, Thaltej, )  
Ahmedabad – 380 054 )
8. **LAGHU UDYOG BHARATI- )**  
**GUJARAT )**  
307, Ashram Avenue, )  
Behind Kochrab Ashram, )  
Nr. Paldi Cross Road, Ellisbridge, )  
Ahmedabad – 380 006 )
9. **BHARATIYA SAMYAWADI )**  
**PAKSH (MARKSWADI) )**  
Mansukhbhai Nanjibhai )  
Khorasiya, Shop No. 303, Arjun )  
Complex, Near Rupali Naher, )  
Bhatar Road, Surat – 395007 )
10. **UTILITY USERS’ WELFARE )**  
**ASSOCIATION (UUWA) )**  
Lakshmi Ginning Compound, )  
Opp. Union Co. Op. Bank Ltd., )  
Naroda, )  
Ahmedabad – 382330 )
11. **GUJARAT CHAMBER OF )**  
**COMMERCE & INDUSTRY )**  
Shri Ambica Mills Gujarat )  
Chamber Building, )  
P.O. Box No. 4045, Ashram Road, )  
Ahmedabad – 380009 )
12. **SHRI AMARSING CHAVDA, )**  
Heritage Bungalow, )  
Near Science City, )  
Ahmedabad – 380060(Gujarat) )

Counsel for the Appellant(s) :Mr. Ramji Srinivasan, Sr. Adv.  
Ms. Deepa Chawan  
Mr. Hardik Luthra  
Mr. Chetan Bandela  
Mr. Tapan  
Mr. Tushar Bhardwaj  
Mr. Vivek Paul Oriel

Counsel for the Respondent(s) :Mr. Sanjay Sen, Sr. Adv.  
Mr. Buddy A. Ranganadhan  
Mr. Hemant Singh  
Ms. Sikha Ohri  
Mr. Saahil Kaul  
Mr. Nimesh Kr. Jha a/w  
Mr. S.R. Pandey (Rep.) for  
**R.1**

Mr. I.J. Desai for **R.2**

Mr. Subhash Chandran for  
**R.9**

**APPEAL NO.186 OF 2016 & IA NO. 401 OF 2016**

**In the matter of:-**

**TORRENT POWER LIMITED** )  
Incorp. Under the Companies Act, )  
1956, Having its Registered Office at )  
Torrent House, Off Ashram Road, )  
Ahmedabad – 380009, Gujarat ) ... **Appellant(s)**

**AND**

1. **GUJARAT ELECTRICITY )  
REGULATORY COMMISSION, )**  
A Commission constituted under )  
the provisions of Repealed )  
Electricity Regulatory )  
Commissions, 1998, )  
Having its office at- )  
6<sup>th</sup> Floor, GIFT ONE )  
Road 5C, Zone 5, GIFT City, )  
Gandhinagar – 382355 )
2. **SURAT CITIZENS' COUNCIL )  
TRUST )**  
A- 205-206, Tirupati Plaza, )  
2<sup>nd</sup> Floor, Nr. Collector Office, )  
Nanpura, Surat – 395 001 )
3. **SMT. BHAVNA BHASKAR )  
PATEL )**  
J 19, Ranchhodnagar, )  
Bodakdev, Vastrapur, )  
Ahmedabad – 380 054 )
4. **AKHIL GUJARAT GRAHAK )  
SEWA KENDRA, )**  
KARAKA Street, Saraspur, )  
Ahmedabad – 380018 )
5. **SHRI H.J. PATEL (RETD. CE, )  
DGVCL), )**  
At & Po, Talavchara, Ta. Chikhli, )  
Dist. Navsari, Pin: 396529 )
6. **SHRI VIJAY PATEL )  
[Vijay411@yahoo.com](mailto:Vijay411@yahoo.com) )**

- 
7. **CONSUMER EDUCATIONAND )**  
**RESEARCH SOCIETY, )**  
“Suraksha Sankool”, Sarkhej- )  
Gandhinagar Highway, Thaltej, )  
Ahmedabad – 380 054 )
8. **LAGHU UDYOG BHARATI- )**  
**GUJARAT )**  
307, Ashram Avenue, )  
Behind Kochrab Ashram, )  
Nr. Paldi Cross Road, Ellisbridge, )  
Ahmedabad – 380 006 )
9. **BHARATIYA SAMYAWADI )**  
**PAKSH (MARKSWADI) )**  
Mansukhbhai Nanjibhai )  
Khorasiya, Shop No. 303, Arjun )  
Complex, Near Rupali Naher, )  
Bhatar Road, Surat – 395007 )
10. **UTILITY USERS’ WELFARE )**  
**ASSOCIATION (UUWA) )**  
Lakshmi Ginning Compound, )  
Opp. Union Co. Op. Bank Ltd., )  
Naroda, Ahmedabad – 382330 )
11. **SHRI AMARSING CHAVDA, )**  
Heritage Bungalow, )  
Near Science City, )  
Ahmedabad – 380060 )  
Gujarat )
- ... **Respondents**

Counsel for the Appellant(s)

:Mr. Ramji Srinivasan, Sr. Adv.  
Ms. Deepa Chawan  
Mr. Hardik Luthra

Mr. Chetan Bandela  
Mr. Tapan  
Mr. Tushar Bhardwaj  
Mr. Vivek Paul Oriel

Counsel for the Respondent(s)

:Mr. Sanjay Sen, Sr. Adv.  
Mr. Buddy A. Ranganadhan  
Mr. Hemant Singh  
Ms. Sikha Ohri  
Mr. Saahil Kaul  
Mr. Nimesh Kr. Jha a/w  
Mr. S.R. Pandey (Rep.) for  
**R.1**

Mr. I.J. Desai for **R.2**

Mr. Subhash Chandran for  
**R.9**

## **J U D G M E N T**

### **PER HON'BLE (SMT.) JUSTICE RANJANA P. DESAI – CHAIRPERSON**

1. All these appeals can be disposed of by a common judgment because they arise out of same facts and involve common issues. In Appeal Nos.178 of 2016, 179 of 2016, 180 of 2016 and 181 of 2016, Order dated 16/06/2016 passed by the Gujarat Electricity Regulatory Commission (“**the State Commission**”) is challenged. In Appeal No.183 of 2016, 184 of 2016, 185 of 2016

and 186 of 2016, Order dated 01/07/2016 passed by the State Commission is challenged.

2. We must begin with the facts. In all these appeals, Torrent Power Limited is the Appellant. It is a company incorporated under the provisions of the Companies Act, 1956 (**“the Appellant”**). The Appellant is in the business of generation and distribution of electricity. Respondent No.1 is the State Commission in all these appeals.

3. On 31/03/2016, two members of the State Commission (Mr. P.J. Thakkar and Mr. K.M. Shringarpure) passed the Tariff Order in respect of the Truing Up of F.Y. 2014-15, Approval of Provisional ARR for F.Y. 2016-17 and Determination of Tariff for F.Y. 2016-17 for the Appellant in Petition No.1552 of 2015. Bipinchandra Kanaiyalal Joshi (Respondent No.2 in Appeal No.178 of 2016), Government of Gujarat (Respondent No.2 in Appeal No.179 of 2016) and Surat Citizens Council Trust

(Respondent No.2 in Appeal No.180 and 181 of 2016) filed review petitions seeking review of Order dated 31/03/2016.

4. The Appellant objected to the maintainability of the review petitions. Prayer for interim relief was made. On 21/04/2016 in R.P. No.1568 of 2016 filed by Bipinchandra Joshi arguments were heard on maintainability and interim relief. The review petitions were heard by three members i.e. Mr. Anand Kumar, the Chairman and the earlier two members i.e. Mr. P.J. Thakkar and Mr. K.M. Shringarpure. On 22/04/2016, the aforesaid Three-Members passed the daily order granting interim relief and staying the levy of the regulatory charge of 45 paise per unit stipulated in the Tariff Order dated 31/03/2016 passed in Petition No.1552 of 2015 which had come into effect from 01/04/2016. Any reference to Three-Members in this judgment is reference to the aforesaid Three-Members of the State Commission.



5. In Appeal No.121 of 2016, the Appellant challenged the interim Order dated 22/04/2016 in R.P. No.1568 of 2016 passed by Three-Members. On 16/05/2016, this Tribunal disposed of the said appeal observing that since impugned orders are interim orders and the State Commission had fixed the hearing on 18/05/2016, this Tribunal was not inclined to interfere with them at this stage. This Tribunal expressed that it expected the State Commission to dispose of the review petitions on 18/05/2016 finally and pass a speaking order within ten days thereafter.

6. The State Commission filed an application for extension of time. On 03/06/2016, the said application was heard. This Tribunal directed the State Commission to decide the issue regarding maintainability of the petitions within two weeks i.e. on or before 17/06/2016 and to pass appropriate order on merit within four weeks' time i.e. on or before 01/07/2016. This Tribunal made it clear that the order was being passed without

prejudice to the rights of the Appellant to challenge the order to be passed on maintainability if the need arises.

7. Gist of each of the review petitions filed by the parties and response of the Appellant to the same is found in the Order dated 16/06/2016. It would be appropriate to set out the same here because that will give some idea about the grievance of the review petitioners.

8. In Review Petition No.1572 of 2016 filed by the Government of Gujarat, the issue raised is about the double counting of revenue requirements on account of rebate on prompt payment given over and above the interest on working capital. It is stated that in the Order dated 31/03/2016 the State Commission has allowed the Appellant Prompt Payment Rebate. In addition to that the Appellant claimed and was allowed interest on working capital on normative basis inclusive of the two months' receivables. It is stated that Prompt Payment Rebate takes care of carrying cost during the said period. The Prompt Payment

Rebate given over and above the interest on working capital would be double counting of the revenue requirements. The Prompt Payment Rebate makes cash flow available to the Appellant. Therefore the increase in revenue requirements by allowing Prompt Payment Rebate would be an additional benefit to the Appellant at the cost of the consumers. Another issue raised by the Government of Gujarat in its letter dated 16/04/2016 was that subsidy support available to the Appellant under E-Bid RLNG Scheme of the Government of India was not taken into account. If that was taken into account revenue gap would have reduced, consequently reducing the regulatory charge.

9. In Review Petition No.1568 of 2016 filed by Shri Bipinchandra Joshi - a consumer of the Appellant in Gandhinagar, also, issue is raised about Prompt Payment Rebate. It is contended that if the rebate given to the consumers is once again to be recovered from the consumers in the revenue requirements, there is no purpose whatsoever in granting rebate.

Hence, Prompt Payment Rebate of about 168 crores should be given due adjustment in the revenue requirements of the Appellant. In this petition also, it is urged that subsidy support available to the Appellant from PSDF Fund under E-bid RLNG Scheme of the Government of India which would reduce the revenue gap consequently reducing the regulatory charge had the same been taken into account, in the Order dated 31/03/2016 erroneously it has not been taken into account. Thirdly, it is stated that if the Prompt Payment discount as well as the subsidy support from the PSDF Fund, a total whereof aggregating to around Rs.700 crores was taken into account while passing the order dated 31/03/2016, the revenue gap would not have been Rs.470 crores and therefore there was no question of allowing a regulatory charge of 45 paise per unit.

10. In Review Petition No.1573 of 2016 filed by the Surat Citizens Council Trust & Anr. review of order dated 31/03/2016 is sought on three grounds. It is urged that during F.Y. 2014-15, the Appellant had failed to fulfill its Renewable Purchase

Obligation, however, its claim of power purchase cost of Rs.1902.08 crores which included Rs.142.69 crores for renewable energy was fully allowed. This has impacted the tariff ultimately determined by the State Commission to the detriment of the consumers. Therefore, ARR's need to be reviewed. Secondly, it is submitted that the ARR's and the Tariff Orders for the two different and distinct licensed areas of Ahmedabad and Surat have always been separate. In F.Y. 2015-16 in Surat areas there were only 5,86,000 consumers whereas in Ahmedabad/Gandhinagar there were 17,00,000 consumers. The revenue gap arrived at for Ahmedabad in the impugned order is Rs.409.62 crores, whereas the revenue gap for Surat is Rs.150.88 crores. Despite this, a common regulatory charge of 45 paise per unit has been applied for recovery from the consumers of both these areas. If the regulatory charge would have been bifurcated in the proportion of 26.92% and 73.08% between Surat and Ahmedabad/Gandhinagar respectively, a proportion arrived at by applying the respective revenue gaps to the total revenue gap of Rs.470.50 (Ahmedabad gap of Rs.407.62

i.e. 73.08% and Surat gap of Rs.150.88 crores i.e. 26.92%), that would have resulted in regulatory charge of 12 paise per unit from the consumers of Surat and 33 paise per unit from the consumers of Ahmedabad/Gandhinagar areas. Thirdly, it is submitted that this Tribunal in Appeal Nos.190 of 2011 and 162 of 2012 laid down principles with regard to carrying cost. Question is raised whether the State Commission examined that carrying cost is a legitimate expenditure of the distribution company as per the above mentioned judgment of this Tribunal. In Review Petition No.1574 of 2016, Surat Citizens Council Trust & Anr. has raised similar grounds.

11. The Appellant's reply to the review petitions needs to be summarized. As regards Prompt Payment Discount, it is submitted that Prompt Payment Discount was put into operation pursuant to this Tribunal's directions in Orders dated 06/09/2011, 02/06/2012, 16/04/2013 and 29/04/2014. Hence, Prompt Payment Discount cannot be reviewed till Order dated 06/09/2011 is challenged or reviewed. Issues raised by

the State Government in its letter have been dealt with by the State Commission in its Order dated 31/03/2016. Raising the same issues would amount to hearing the matter under the garb of review proceedings. So far as PSDF Scheme is concerned, it is submitted that no such amounts were paid to the Appellant. The amounts were received by the generator through the Appellant and, therefore, the question of including the said amounts in the projected revenue requirements does not arise.

12. The Appellant further contended that the review petitions are beyond the scope of original proceedings as the original proceedings neither relate to F.Y. 2015-16 nor is the Appellant participating in PSDF Scheme for F.Y. 2016-17. It is submitted that there is no error apparent in the impugned order. A review petition cannot be an appeal in disguise. The review petitions are also barred by limitation.

13. So far as allowance of Rs.142.69 crores towards Power Purchase Cost of renewable energy is concerned, it is contended

that the State Commission has stated that it will take a decision in the appropriate pending proceedings. Hence, no review can be sought on that ground.

14. As regards the contention of disproportionately levying regulatory charge amongst the consumers of Surat and Ahmedabad /Gandhinagar is concerned, it is submitted that the same is subject to verification and consideration during truing up of F.Y. 2016-17. In any case it is in the discretion of the State Commission to provide for the mode and manner of recovery of gap. In any case this does not amount to an error apparent on the face of the record. Regarding levy of carrying cost, it is contended that all contentions raised regarding the same are untenable and cannot be considered for grant of review. The Appellant submitted that the review petitions are abuse of process of law and are untenable in law.

15. Utility Users Welfare Association consisting of end-users of electricity in the State of Gujarat seeking to intervene in the



matters filed written submissions *inter alia* contending that there is a *lacuna* in the release of PSDF insofar as the heat rate is concerned; that the utilization of the PSDF Fund as contemplated by the Government of India for the benefit of the gas based generators, is itself questionable and that the Appellant has under the guise of FPPPA head recovered the FPPPA of Rs.1.98 per unit in which Rs.0.76 per unit is allowed by the State Commission to recover as carrying cost and revenue gap of previous years.

16. In view of this Tribunal's Order dated 03/06/2016, Three-Members considered the contents of the review petitions and submissions of the parties on the question of maintainability of the review petitions. Three-Members referred to Section 94(1)(f) of the said Act which confers power on the State Commission to review its decisions, directions and orders. Three-Members also referred to Regulation 72(1) of the Gujarat Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 ("**GERC Regulations**") which confer power of review on the State

Commission *inter alia* on the ground of mistake or error apparent on the face of record. Three-Members also noted that review power is to be exercised in exceptional circumstances. Having examined the scope of power of review, Three-Members held that the Government of Gujarat was entitled to seek a review to safeguard the interest of the consumers and the public.

17. So far as objection that the review petitions are hit by 'bar of limitation' is concerned, Three-Members held that since the revenue gap up to F.Y. 2014-15 has been calculated for the first time in the impugned order, there is no question of seeking a review of the tariff orders passed since the year 2011. Hence, the objection as to the limitation was rejected as being without merit.

18. Three-Members then held that a common regulatory charge of 45 paise per unit from consumers of Surat and Ahmedabad/Gandhinagar when revenue gaps for both these areas are different is an error. It was further held that non-consideration of the entire additional revenue recovered through

FPPPA during F.Y. 2015-16 is an error which is required to be set right. Three-Members also came to a conclusion that PSDF subsidy was not taken into account for working out the revenue gap. Whether the amount of PSDF subsidy was passed on to the generators by the Appellant as per the provisions of the said Act, relevant regulations and PSDF scheme is not clear. Similarly, whether benefit of PSDF amount is passed on to the consumers is not clear. Three-Members observed that in the circumstances, there are sufficient reasons to review the order dated 31/03/2016. Three-Members further observed that prompt payment discount which is recovered over and above the interest on working capital by the Appellant needs to be passed on to the consumers. Double counting of revenue requirements on account of rebate on prompt payment given over and above the working capital is an error on the face of record. Three-Members further observed that the Appellant claimed carrying cost for the period upto and inclusive of F.Y. 2016-17. Allowing carrying cost for F.Y. 2016-17 without incurring the expenditure is an error and there is sufficient cause for review of the order dated

31/03/2016. Three-Members thus concluded that there are sufficient grounds for a review as there is an error in computation of the revenue gaps and regulatory charge and, therefore, the review petitions are maintainable so as to redetermine the regulatory charge.

19. Having complied with this Tribunal's direction to decide the issue regarding maintainability by 17/06/2016 and having held that the review petitions were maintainable, Three-Members proceeded to hear the review petitions so as to pass appropriate orders thereon on or before 01/07/2016. Three-Members dealt with the issues and passed the impugned order dated 1/7/2016 finally disposing of the review petitions.

20. While assailing the impugned orders, the Appellant has raised following two preliminary submissions a) Whether the Chairperson of the State Commission could have joined two members of the State Commission to adjudicate the review proceedings and b) Whether the review petitions were appeals in

disguise. Learned counsel for the parties have addressed us on these issues extensively. Written submissions have also been filed. We shall first deal with the question whether Three-Members could have dealt with and finally disposed of the review petitions when the original order was passed by the two members because if this exercise is found to be illegal then the impugned orders will have to be set aside on that count. We shall therefore proceed to give gist of the submissions of the counsel on the said issue. We however make it clear that in this judgment we are concerned only with review petitions. The crucial question which falls for our consideration is whether in a case where the original order is passed by two members, can a review petition seeking review of the said order be decided by the said two members along with one additional member when the members who passed the original order were very much there. We have focused our attention only on this issue. This judgment does not deal with the question of passing of original orders such as orders determining tariff and quorum for the same.

21. Gist of the submissions of Mr. Ramji Srinivasan, learned counsel appearing for the Appellants:

- a) The original Tariff Order dated 31/03/2016 was passed by Two Member Bench. Even though learned Members who passed the said order were available the Chairperson joined them and in complete disregard of the GERC Regulations 2004 passed the impugned orders.
- b) It is a settled principle of law that one who hears must decide and only exception being the doctrine of necessity. There existed no necessity in this case. The State Commission has in its counter-affidavit acknowledged the legal principle that the Bench which passed the order under review has to adjudicate the review proceedings. Reliance is placed on **M/s Kwaliti Restaurant & Ice-Cream Co. v. The Commissioner of VAT, Trade and**

**Tax Department & Ors<sup>1</sup>** and **Malthesh Gudda Pooja v. State of Karnataka and Ors<sup>2</sup>**

- c) Introduction of a new Member to the original Bench for hearing and deciding the review petitions is in violation of the principles of natural justice and is arbitrary and colourable exercise of power. Reliance is placed on **A.K. Kraipak & Ors v. Union of India<sup>3</sup>** and **Gullapalli Nageswara Rao & Ors v. APSRTC & Ors<sup>4</sup>**.
- d) The provisions of Regulation 72 of the GERC Regulations and Rule 1 of Order XLVII are in *pari materia*. Section 94 of the Electricity Act, 2003 (“**the said Act**”) expressly confers the powers vested in a civil court under the Civil Procedure Code (“**CPC**”) on the Regulatory Commission for consideration of a review petition.

---

<sup>1</sup> (2010) 194 DLT 195(DB)

<sup>2</sup> (2011) 15 SCC 330

<sup>3</sup> (1969) 2 SCC 262

<sup>4</sup> (1959) Supp-1-319

- e) Without prejudice to the fact that the Appellant has not urged that CPC will apply “*stricto sensu*” it is submitted that application of Order XLVII Rule 1 of CPC to interpret review petitions/regulations and review powers is no longer *res integra* [See: **DSR Steel**].
- f) Rule 5 of Order XLVII is a slight departure from Rule 1 of Order XLVII. Rule 5 of Order XLVII permits an exception and dilutes the mandatory provision of Rule 1 in cases where the same judge is not available for six months. Absence of Rule 5 makes no difference.
- g) As long as Regulation 72 exists the mandatory provision that the review petition should be made to “The Commission” which passed “The Original Order” continues to apply with full vigour.



h) The Appellant's case is strengthened by Regulations 2, 16, 58 of the GERC Regulations. In **PTC v. CERC**<sup>5</sup>, the Supreme Court has held that once regulations are framed the Regulatory Commissions are bound by them.

[See: **Ajmer Vidyut Vitaran Nigam Limited, Rajasthan v. Rajasthan State Electricity Regulatory Commission, Jaipur**<sup>6</sup>, **North Eastern Electric Power Corporation Ltd. v. Assam State Electricity Board**<sup>7</sup> and **in H.M. Steel Ltd & Ors v. HPERC & ORS.**<sup>8</sup>]

i) Regulation 72 provides for reconsideration. There cannot be reconsideration by a Member who was not a part of quorum which passed the original order.

j) Review proceedings are in continuation of original proceedings and hence the composition of the

---

<sup>5</sup> 2010(4) SCC 663

<sup>6</sup> 2013 ELR (APTEL) 0051

<sup>7</sup> 2008 ELR (APTEL) 0371

<sup>8</sup> Order dt.24/3/2009 in Review Petition 1/2009 in Appeal 64/2008

Bench to hear the review proceedings shall be the same as that of original tariff order dated 31/03/2016.

- k) If the contention that the State Commission means Three Members and Two Members did not constitute Commission is accepted, then the original tariff order dated 31/03/2016 would become illegal.
- l) In the present case GERC Regulations clearly provide for the modality of Review and the quorum. Section 93 of the said Act would not be therefore applicable. Reliance placed on **Shri Ishwar Chandra v. Shri Satyanarain Sinha & Ors**<sup>9</sup> is therefore misplaced. Facts of **Amausi Industries Association & Ors v. Uttar Pradesh Electricity Regulatory Commission & Ors**<sup>10</sup> and **Faridabad Industries Association & Ors v. Haryana**

---

<sup>9</sup> (1972) 3 SCC 383

<sup>10</sup> 2014 ELR (APTEL) 0362

**Electricity Regulatory Commission**<sup>11</sup> are clearly distinguishable from the facts of the present case.

- m) The claim that the Appellant did not raise any objection to the constitution of the Bench is untrue.
- n) Regulation 72 does not include within its ambit the factor of exceptional circumstances affecting public interest as a ground of review. The larger public interest requires finality and certainty to all orders.
- o) There is no question of remand in the facts of the present case as the minds of the original Two Members cannot remain free of bias and influence projected by the Third Member. [See: **A.K. Kraipak, Malthesh Gudda Pooja**]

22. We have heard Mr. Ramachandran learned counsel appearing for Respondent No.2 – Government of Gujarat. Written

---

<sup>11</sup> 2011 ELR (APTEL) 1527

submissions have been filed by Respondent No.2. Gist of the submissions is as under:

- a) The review petition was heard and decided by the Chairperson and two members. It is not a case where review petition was either heard by two members and decided by three or heard by three members and decided by two.
  
- b) The review cannot be held to be a continuation of the proceedings in which the order sought to be reviewed has been passed. It is neither a rehearing nor an appeal in disguise. The concept of continuation of proceedings applies to an appeal filed against an order in a civil matter. [See: ***Lakshmi Narayan Guin v Niranjan Modak***<sup>12</sup>]. If the concept of continuation of the proceedings is extended, the appeal cannot be heard by the same judges who passed the decree appealed from.

---

<sup>12</sup> (1985) 2 SCR 202

Therefore, the concept of continuation of proceedings cannot lead to the proposition that the same judges who heard and passed the order to be reviewed should also hear the review petition.

- c) The substantive provision dealing with review under the CPC is Section 114. The provisions of Order XLVII are Rules of the procedure contained in the Schedule to the CPC. While, the substantive provision of Section 114 would apply *pari materia* to a proceeding under the said Act, by virtue of the stipulation contained in Section 94 (1) (f) of the said Act, the procedural provision contained in Order XLVII will have application only subject to the regulations framed by the State Commission.
- d) The reading of the above provisions of Sections 121 to 130 of the CPC establishes that the provisions of Order XLVII of the CPC can always be modified.

Order XLVII Rule 5 of the CPC including the stipulation that no other judge or judges of the court, shall hear the review petition, is subject to such modification. The stipulation that the same judge and no other judge shall hear review is not contained in Section 114 of the CPC. Accordingly, the stipulation contained in Order XLVII Rule 5 cannot be held to be of a mandatory nature.

- e) In terms of Section 122 of the CPC, it is open for the High Court to make rules regarding their own procedure. [See: **State of Uttar Pradesh v. Chandra Bhushan Misra<sup>13</sup>, Chandra Bhushan Misra v. Jayatri Devi<sup>14</sup>.**]
- f) Section 122 of the CPC is similar to Section 181 of the said Act. Section 181 enables the State Commission to make its own Regulations.

---

<sup>13</sup> (1980) 1 SCC 198

<sup>14</sup> AIR 1969 All 142

Regulation 72 of the GERC Regulations does not provide for any procedural rule akin to Order XLVII Rule 5. As regards the quorum in the Meeting, the GERC Regulations prescribe that the Chairman (if present), shall necessarily preside over the proceedings.

- g) A perusal of Section 82 onwards of the said Act envisages that all orders are to be passed by the Appropriate Commission. The proceedings before the State Commission are before the State Commission as a whole. All orders are issued by the Commission irrespective of whether they are made by two Members or three Members. The Commission functions as a perpetual entity with changes in the number of Members from time to time. Unlike this Tribunal, the Commission does not sit in Benches.

- h) A conjoint reading of the above-mentioned provisions of the said Act indicates that the Chairperson or any member, if present, shall attend the proceedings and be a part of the decision making process. The ideal situation would be that all the three Members who have distinct qualifications should participate.
- i) By the time the review petition was filed by the Government of Gujarat and was to be heard, the vacancy in the post of Chairman was duly filled and the constitution of the State Commission consisted of a Chairman and two Members. If the Chairperson was not made a part of the proceedings then that would negate the intent of the said Act.
- j) In **Ratanlal Nahata and etc. v. Nandita Bose and etc**<sup>15</sup>. the Calcutta High Court held that

---

<sup>15</sup> AIR 1999 Cal 29



Order XLVII Rule 5, forming part of the First Schedule appended to the CPC is not mandatory and the procedural rules framed by the High Court shall prevail. This judgment was followed by the Andhra Pradesh High Court in **A. Srinath &Ors. v. The Andhra Pradesh State Road Transport Corporation &Ors.**<sup>16</sup>

- k) The Seven Judges Bench of the Calcutta High Court in **Madandas v Lt. Governor**<sup>17</sup> on which reliance is placed by the Appellant over-ruled the decision in **K N Mishra v Union of India**<sup>18</sup>. But the Seven-Judges Bench did not over-rule the decision of the Five Judges in **Ratanlal Nahata** on which reliance is placed by the Respondent.
- l) In any case the issue in **KN Mishra's** case was different from the issue which is being raised in

---

<sup>16</sup> AIR 1996 AP 309

<sup>17</sup> AIR 2011 Cal 168

<sup>18</sup> AIR 2003 Calc 307

the present case. In **Ratanlal Nahata** the five Judges have duly considered the situation where the review petition had been heard by more number of Judges than the persons who heard the main matter.

- m) Section 93 of the said Act provides that no proceedings shall be invalidated on the ground of existence of any vacancy or defect in the constitution of the Appropriate Commission [See: This Tribunal's judgments in **Amausi Industries Association and Faridabad Industries Association.**]
- n) There is no dispute on the proposition that the persons who heard the matter should decide the matter. The decisions relied upon by the Appellant present different situations and therefore are not relevant.

- o) Under the said Act, the Regulatory Commission can devise its own procedure. Under Regulation 58(1) of the GERC Regulations the Commission comprising the Chairperson and Members who heard the case shall pronounce the judgment. Accordingly, the Members who heard the review petition have decided the matter.
- p) The Appellant did not particularly raise any issue regarding alleged defect in the constitution of the State Commission. Having participated in the proceedings the Appellant cannot be permitted to raise this issue.
- q) **C. N. Paramasivam and Another v. Sunrise Plaza<sup>19</sup>** is in the context that when a provision from another Act is bodily transported in an Act, in certain situations, it may be necessary to refer to

---

<sup>19</sup> (2013) 9 SCC 460

other parts of the said another Act, which may not have been incorporated. This is to understand the scope and meaning of the provisions which stand incorporated. This is not a case where the provisions of Order XLVII Rule 1 of CPC incorporated in Regulation 72 of the State Commission are vague to call for external aid to understand the scope and meaning of Order XLVII Rule 1. The proposition cannot be extended into bringing into effect other independent provisions, namely Order XLVII Rule 5.

- r) In the circumstances there is no merit in the contentions raised by the Appellant about the constitution of the State Commission.

23. Mr. Sanjay Sen learned senior counsel appearing for the State Commission has also addressed us. Written submissions have been filed by him. Most of the submissions are identical to the submissions advanced by Mr. Ramachandran. We shall

therefore not repeat all the submissions. Gist of the submissions is as under:

- a) The power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. [See: **Patel Narshi Thakershi v. Pradyumanshingji Arjunsinghi**<sup>20</sup> ].
  
- b) The power to review is conferred upon the State Commission as per Section 94(1) (f) of the said Act read with Regulation 72 of the GERC Regulations. Order XLVII Rule 5 of the CPC does not find mention in the above regulations. Therefore, the interpretation of regulations that they have to be read so as to include Order XLVII Rule 5 CPC would be to create an entirely new regulation which this

---

<sup>20</sup> (1971) 3 SCC 844

Tribunal cannot do. Order XLVII Rule 5 has been expressly excluded from GERC Regulations.

- c) The State Commissions are required to observe such rules of procedure that have been specified by its regulations. Under Section 92 of the said Act the State Commission has enacted GERC Regulations for governing its functions and exercise of its powers. This is necessary for a Regulatory Commission to discharge its various functions which *inter alia* are 'regulatory' and 'adjudicatory' in nature. In the event the State Commissions are held to be strictly bound by the procedures applicable to civil courts, especially the CPC, then the State Commissions would be incapable of exercising most of its regulatory functions, including determination of tariff. Qua tariff the principles of even *res judicata* do not apply. [See: **U.P. Power Corporation Ltd. v. NTPC**

**Ltd.**<sup>21</sup> and judgment of this Tribunal in **Delhi Transco Ltd. v. Delhi Electricity Regulatory Commission**<sup>22</sup> ].

- d) Though tariff proceedings are quasi judicial in nature, from the statute it is clear that they stand on a different footing and can be distinguished from any adjudicatory proceedings.
- e) The power of a civil court has to be distinguished from the procedure that a civil court is required to follow.
- f) Regulatory Commission has much wider jurisdiction than that of a civil court with respect to matters within its domain.
- g) While under Section 94, the State Commissions are vested with the powers of a civil court for

---

<sup>21</sup> 2009-6-SCC 235

<sup>22</sup> 2009 SCC Online APTEL 6

certain matters, they are deemed to be a civil court only for the purposes of Sections 345 and 346 of the Criminal Procedure Code. Apart from the limited deeming provision provided in Section 95 of the said Act, the State Commissions cannot be held to be civil courts nor would the CPC apply to them. Sections 94 and 95 were necessitated only because the State Commissions were not civil courts. If the State Commissions were otherwise, civil courts, there would have been no need to introduce the legal fiction of Sections 94 and 95 to give them certain limited powers of the civil courts.

- h) If one Act, by reference draws upon certain provisions of another Act, it does not mean that the entire other Act is bodily incorporated into the Principal Act. If the said Act refers to the “powers” of a Civil Court for the purpose of review, it is only those provisions of the CPC which pertain to the “powers” of the Civil Court which would apply and



none others. The procedures of the Civil Court contained in the CPC could not by such reference, apply to the State Commissions. [See: Judgment of this Tribunal in **Maharashtra State Electricity Transmission Company Limited v. Shri Vikram Sunderdas Setiya and Anr**<sup>23</sup> , judgment of this Tribunal in **Gujarat Urja Vikas Nigam Limited v. Gujarat Electricity Regulatory Commission and Ors.**<sup>24</sup>, judgment of Delhi High Court in **BSES Rajdhani Power Ltd v. State of NCT of Delhi and Anr.**<sup>25</sup> and **Patna Electricity Supply Co. Ltd. v. Patna Municipal Corporation**<sup>26</sup>.

- i) The State Commissions are not courts and the provisions of the CPC cannot be applied to them by sidestepping the procedure and regulations

---

<sup>23</sup> Judgment dt.07/09/2011 in Appeal 83 of 2010

<sup>24</sup> Judgment dt.22/08/2014 in AppealNo.279/2013

<sup>25</sup> 2010 SCC Online Del 4117

<sup>26</sup> (1970) 3 SCC 851

adopted by the State Commissions. The State Commissions have much wider jurisdiction than that of a civil court with respect to matters falling within their domain. [See: **M.P. Steel Corpn. V. CCE<sup>27</sup>** ]

- j) The powers of the Commission in passing tariff orders cannot possibly be equated with the powers of a civil court adjudicating disputes and hence, the CPC cannot find any applicability in tariff matters.
  
- k) The said Act has been held to be a ‘Complete Code’. External aids such as other Acts could not be read into the said Act unless expressly mandated by the said Act to do so. Section 94 of the said Act avoids any foreign inclusion. It only gives powers of a Civil Court to a State

---

<sup>27</sup> (2015) 7 SCC 58

Commission for discharge of certain functions including review proceedings. That does not mean that the procedure of a civil court has to be followed while discharging such powers.

- 1) Once a law/regulation becomes part of a statute, then a decision has to be made only on the basis of such statute/provision and not on any general principle. [See: **Gulabchand Chhotalal Parikh v. State of Gujarat**<sup>28</sup>]
  
- m) The distinction between the regulatory jurisdiction of the Commission and the adjudicatory jurisdiction of the Commission qua disputes in the context of the Limitation Act 1963 has been recognized in **A.P. Power Coordination Committee v. Lanco Kondapalli Power Ltd.**<sup>29</sup>.

---

<sup>28</sup> (1965) 2 SCR 547

<sup>29</sup> (2016) 3 SCC 468

- n) **Amol Pharmaceuticals Ltd** has no application to this case because in that case this Tribunal was called upon to answer the question that when the Conduct of Business Regulations of the Appropriate Commission incorporates only Order XLVII Rule 1 and does not expressly incorporate the principle contained in Order XLVII Rule 5, whether CPC can still override the provisions of the regulations. Similar is the case with **DSR Steel (Private) Limited v. State of Rajasthan and Ors.**<sup>30</sup>
- o) **A.K Kraipak** is also not applicable because facts of that case differ from the facts of the present case. **A.K. Kraipak** dealt with a situation of personal bias and violation of principles of natural justice. Such is not the case here.

---

<sup>30</sup> (2012) 6 SCC 782

- p) **Gullapalli Nageswara Rao** has also no application to the present case because it lays down the proposition that the person who has heard the matter should give the judgment. This requirement is complied with in this case.
- q) In **Malthesh Gudda Pooja** the Supreme Court has held that Order XLVII Rule 5 of the CPC and Chapter 3 Rule 5 of the High Court Rules mandate that the judges who made the Order in regard to which review is sought continue to be judges of the court they could hear the application for review and not any other judges unless precluded by death, retirement or absence from the court for a period of six months from the date of application. However, here the regulations applicable to review proceedings before the State Commission do not have any provision that is similar to Order XLVII

Rule 5 of the CPC or Rule 5 of the High Court Rules.

- r) The judgment of the Supreme Court in the **State of Orissa and Ors. v. Commissioner of Land Records and Settlement, Cuttack and Ors**<sup>31</sup> has no application to the present case because there the power of review was conferred under Rule 5 of the Odisha Board of Revenue Rules 1959 which stated that the Board hearing a review was “deemed to be a court”. This aspect is clearly distinguishable if one reads Section 94 and 95 of the said Act.

In view of the above submissions challenge to the constitution/composition of the State Commission deserves to be dismissed.

---

<sup>31</sup> 1998-7-SCC 162

24. We have heard Mr. I.J. Desai who appears for Surat Citizens Council Trust, Surat. Written submissions have been filed by him in Appeals No.180 and 181 of 2016 on the maintainability of the review petitions. The gist of the submissions is as under:

- a) The State Commission should not have passed common order dated 16/06/2016 on maintainability in respect of all the review petitions.
- b) So far as Appeals No.180 and 181 are concerned preliminary point on maintainability cannot be allowed to be raised at the appellate level because it was never raised in Review Petition No.1573 of 2016.
- c) Judgments of the Supreme Court namely **(2000) 6 SCC 24** and **(2012) 7 SCC 200** are on scope of

review and not on the impact of the third Member on the other two Members who originally passed the orders dated 31/03/2016.

- d) Reliance is placed on **AIR 1956 SC 213** (paragraph 5).
- e) **AIR 1959 SC 308, (1969) 2 SCC 262, (1998) 7 SCC 162** and **(2011) 15 SCC 330** are distinguishable on facts because in none of them statutory quasi-judicial authority which is statutorily a body corporate is involved.
- f) Under sub-section (1) of Section 82 of the said Act, the State Commission is an indivisible body corporate by the name Gujarat Electricity Regulatory Commission having perpetual succession and a common seal which can sue or be sued. Under sub section (4) of Section 82, the



State Commission shall consist of not more than three Members including the Chairperson. Individual Members of the State Commission are distinct from the State Commission of which they are Members. Two Members passing and signing tariff order dated 31/03/2016 is a Commission and three Members including Chairperson passing and signing order dated 16/06/2016 on maintainability is also a Commission.

- g) Section 114 of the CPC gives power of review to the court. Order XLVII of the CPC speaks about the scope and procedure for review. While Section 94(f) of the said Act gives power of review to the State Commission, Regulation 72(1) specifies the scope and procedure of review. Since provisions contained in Order XLVII including Rule 5 therein are not analogous to provisions contained in Regulation 72(1), the decisions of the Supreme

Court given on Order XLVII Rule 5 are not applicable to this case.

- h) By insertion of Section 94(1)(f) in the said Act Parliament has not incorporated the entire CPC including Order XLVII of the CPC into the said Act.
- i) The State Commission is not a court and proceedings before the State Commission are not judicial proceedings.
- j) Order dated 16/06/2016 has been passed and signed by all the three Members and out of the three Members two Members are the same who had passed and signed tariff orders dated 31/03/2016 and therefore there is no question of order dated 16/06/2016 being invalid.

- k) Section 93 of the said Act (analogous to Regulation 89) clearly states that no act or proceeding of the Appropriate Commission shall be questioned or shall be invalidated merely on the grounds of existence of any vacancy or defect in the constitution of the Appropriate Commission.
- l) Regulations 80 and 82 give the State Commission freedom to pass orders to meet the ends of justice in a manner it thinks fit. Therefore validity of order dated 16/06/2016 cannot be questioned on the ground of constitution of the State Commission. The preliminary objection about the same therefore deserves to be dismissed.

25. Gist of the submissions of the counsel having been noted, we shall proceed to deal with them. Counsel have taken us through the relevant provisions of the said Act and the GERC Regulations. They have interpreted them from their perspective.

We need to first reproduce those provisions and see what their plain language conveys.

26. It is necessary first to reproduce Section 94 of the said Act which delineates the powers of the Appropriate Commission. It reads thus:

***“94. Powers of Appropriate Commission.-***

*(1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:-*

*(a) summoning and enforcing the attendance of any person and examining him on oath;*

*(b) discovery and production of any document or other material object producible as evidence;*

*(c) receiving evidence on affidavits;*

*(d) requisitioning of any public record;*

*(e) issuing commission for the examination of witnesses;*

*(f) reviewing its decisions, directions and orders;*

(g) *any other matter which may be prescribed.*

(2) *The Appropriate Commissions shall have the powers to pass such interim order in any proceeding, hearing or matter before the Appropriate Commission, as that Commission may consider appropriate.*

(3) *The Appropriate Commission may authorise any person, at it deems fit, to represent the interest of the consumers in the proceedings before it.”*

It is important to note that Section 94(f) empowers the State Commission to review its decisions, directions and orders and says that for that purpose it shall have the same powers as are vested in a civil court under the CPC. In this context, Regulation 54 needs to be quoted:

***“Powers of the Commission to call for further information, evidence, etc.***

*54. The Commission shall, for the purposes of any inquiry or proceedings under these Regulations, have the powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 for the following matters namely:*

(a) *summoning and enforcing the attendance of any person and examining him on oath;*

- (b) *requiring the discovery and production of any document or other material object producible as evidence;*
- (c) *receiving evidence on affidavits;*
- (d) *requisitioning of any public record or a copy thereof from any court or office;*
- (e) *issuing commission for the examination of witnesses or documents;*
- (f) *reviewing its decisions, directions and orders;*
- (g) *any other matter which may be prescribed;*
- (h) *any other matter which may be specified by the Commission by regulations or otherwise.*

This regulation confers similar powers on the State Commission as Section 94 of the said Act does.

27. We must now go to the relevant provisions of the CPC which relate to review. Section 114 and Order XLVII of the CPC need to be quoted.

*“114. Review.- Subject as aforesaid, any person considering himself aggrieved,-*

- (a) *by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,*
- (b) *by a decree or order from which no appeal is allowed by this Code, or*
- (c) *by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.”*

## **“ORDER XLVII OF CPC**

### **REVIEW**

**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 to the Court which passed the decree or made the order.*

*(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when being respondent, he can present to the Appellate Court the case on which he applies for the review.*

**2. To whom applications for review may be made.-** *[Rep. by the Code of Civil Procedure(Amendment) Act, 1956 (66 of 1956), se. 14 (w.e.f. 1-1-1957).]*

**3. Form of applications for review.-** *The provisions as to the form of preferring appeals shall apply mutatis mutandis, to applications for review.*

**4. Application where rejected.-** *(1) Where it appears to the Court that there is not sufficient ground for a review, it shall reject the application.*

*(2) **Application where granted.-** Where the Court is of opinion that the application for review should be granted it shall grant the same:*

*Provided that-*

*(a) no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree or order, a review of which is applied for; and*

*(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or*



*could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation.*

**5. Application for review in Court consisting of two or more judges.-** *Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same.”*

28. We must now have a look at Regulation 72 of the GERC

Regulations which relates to review:

**“Regulation 72**

**Review of the decisions, directions, and orders**

*72(1) Any person aggrieved by a decision or order of the Commission, from which no appeal is preferred or allowed, 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 decisions/order was passed by the Commission or on account of some mistake or error apparent from the face*

*of record, or for any other sufficient reason, may apply for review of such order within 60 days of the date of decision/order to the Commission.*

*(2) The provision as to the forms and procedure with regard to such review application shall apply mutatis mutandis as in case of filing the petition.*

*(3) When it appears to the Commission that there is no sufficient ground for review, the Commission shall reject such review application.*

*(4) When the Commission is of the opinion that the review application should be granted, it shall grant the same, provided that no such application shall be granted without previous notice to the opposite side or party to enable him to appear and to be heard in support of decision or order, the review of which is applied for.”*

29. We must now go to the provision of the said Act which relates to the constitution of the State Commission. Section 82 of the said Act, so far as it is relevant, reads thus:

**“82. Constitution of State Commission:-** (1) *Every State Government shall, within six months from the appointed date, by notification, constitute for the purposes of this Act, a Commission for the State to be known as the (name of the State) Electricity Regulatory Commission:*

*Provided xxxxx*

*Provided xxxxx*

*(2) The State Commission shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.*

*(3) xxxxx*

*(4) The State Commission shall consist of not more than three Members, including the Chairperson.*

*(5) xxxxx”*

Thus the State Commission is a body corporate having perpetual succession. It has a common seal. It can acquire, hold and dispose of movable and immovable property. It can contract and can sue or be sued. It shall consist of not more than three Members, including the Chairperson.

30. We must now proceed to Section 92 which relates to the proceedings of Appropriate Commission. It reads thus:

**“Section 92. Proceedings of Appropriate Commission.-** *(1) The Appropriate Commission shall*

*meet at the head office or any other place at such time as the Chairperson may direct, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as it may specify.*

*(2) The Chairperson, or if he is unable to attend a meeting of the Appropriate Commission, any other Member nominated by the Chairperson in this behalf and, in the absence of such nomination or where there is no Chairperson, any Member chosen by the Members present from amongst themselves, shall preside at the meeting.*

*(3) All questions which come up before the meeting of the Appropriate Commission shall be decided by a majority of votes of the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding shall have a second or casting vote.*

*(4) Save as otherwise provided in sub-section (3), every Member shall have one vote.*

*(5) All orders and decisions of the Appropriate Commission shall be authenticated by its Secretary or any other officer of the Commission duly authorized by the Chairperson in this behalf.”*

Section 92(1) makes it clear that the Appropriate Commission has to observe such rules of procedure in regard to transaction of business at its meetings (including the quorum at its meetings) as it may specify. The word ‘specify; must be read

as specified in regulations because Section 2(62) of the said Act defines the word ‘specified’ to mean specified by regulations. It reads thus:

**“Section 2. (Definitions):-- In this Act, unless the context otherwise requires,--**

... ..

*(62) “specified” means specified by regulations made by the Appropriate Commission or the Authority, as the case may be, under this Act.”*

31. We have already quoted some provisions of the GERC Regulations. It is now necessary to quote a few other provisions which are of some relevance.

**“2. Definitions and Interpretation:**

*2.1 In these Regulations, unless the context otherwise requires:*

*(a) ... ..*

*(b) ... ..*

*(c) ... ..*

*(d) ... ..*

(e) ... ..

(f) ... ..

(g) ... ..

(h) ... ..

(i) *“Proceedings” means and include proceedings of all nature that the Commission may hold in the discharge of its functions under the Acts.*

**16.** *Quorum for the proceedings before the Commission shall be two.*

**58 (1)** *On conclusion of hearing of the case before the Commission, the Commission, comprising of Chairperson and/or Member(s), who heard the case, shall pronounce judgment.*

(2) *The judgment shall be so pronounced at once after hearing or soon thereafter as may be practical, on some future day.*

(3) *The judgment shall be dated and signed by the Commission, at the time of pronouncing it and once signed shall not be afterwards altered, or added to, unless and except there is any clerical or arithmetical mistake in it or errors arising therein from any accidental slip or omission or on review of the judgment in accordance with Clause 72.*

(4) *The judgment shall contain a brief statement of the facts, the points or issues for determination, decision thereon and the reasons for such decision.*

**80.** *Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission*

*to make such orders as may be necessary for ends of justice or to prevent the abuse of the process of the Commission.*

**81.** *Nothing in these Regulations shall bar the Commission from adopting in conformity with the provisions of the Acts, a procedure, which is at variance with any of the provisions of these Regulations, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient for dealing with such a matter or class of matters.*

32. We must now revert to the said Act. Section 93 of the said Act reads thus:

**“93. Vacancies, etc., not to invalidate proceedings.**  
*– No act or proceeding of the Appropriate Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Appropriate Commission.*

33. Similar provision of the GERC Regulations needs to be quoted here:

**“89.** *No act or proceedings of the Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Commission.”*

34. Before we proceed further we must note that the GERC Regulations are framed by the State Commission in exercise of powers conferred under Section 181 of the said Act to make regulations. They pertain to conduct of business of the State Commission. In **PTC India Ltd v. Central Electricity Regulatory Commission**<sup>32</sup> the Constitution Bench of the Supreme Court has held that the regulations emanate from the exercise of delegated legislative power. They are binding being subordinate legislation. It follows from this that the State Commissions are bound by their regulations. In this case the State Commission is bound by the GERC Regulations.

35. We shall now go to the central issue namely application for review and who should decide it. In several cases the Supreme Court has acknowledged the basic principle that one who hears must decide. In **Gullapalli Nageswara Rao**, a scheme was framed under the Motor Vehicles Act for providing an efficient

---

<sup>32</sup> 2010-4-SCC 603



transport service in public interest. Objections were invited to the scheme. The State Government found the objections to be devoid of substance. The scheme was approved. The said scheme was challenged inter alia on the ground that it is *ultra vires* the Motor Vehicles Act. One of the questions considered by the Supreme Court was whether the State Government disposed of the objections judicially in the manner prescribed under the Motor Vehicles Act. It was urged that while the Motor Vehicles Act and the rules framed thereunder required the State Government to give a personal hearing, the procedure prescribed by the rules imposed a duty on the Secretary to hear and the Chief Minister to decide. It was urged that the State Government in approving the scheme was discharging a quasi judicial act and a judicial hearing implies that the same person hears and gives the decision. The Supreme Court while upholding this contention observed that if one person hears and another decides then the personal hearing becomes an empty formality and the said procedure followed in the case before it violated the basic principle of judicial procedure. The Supreme Court further held

that the quasi-judicial enquiry held by the State Government was vitiated by the violation of fundamental principles of natural justice. Thus, it is clear that the principle that one who hears must decide applies even to quasi judicial proceedings and it is a facet of doctrine of natural justice. Even in quasi judicial proceedings, those who are entrusted with duty to decide must decide judicially. If the person who hears does not decide though available there is a violation of principles of natural justice.

36. In **Rasid Javed and Ors. v. State of U.P. and Anr**<sup>33</sup> the Supreme Court reiterated this principle. The Supreme Court observed that the proposition that a person who hears must decide and that divided responsibility is destructive of the concept of judicial hearing is too fundamental a proposition to be doubted and this settled principle has been highlighted by the Supreme Court in **Gullapalli Nageswara Rao**.

37. In our opinion, the above principle would apply with more vigour to review petitions. **Blacks Law Dictionary [8<sup>th</sup> Edition]**

---

<sup>33</sup> 2010-7-SCC-781

defines “review” as consideration, inspection or reexamination of a subject or thing. **Webster’s Comprehensive Dictionary [2004 Edition]** defines “review” as to go over or examine again, look at or study again. It is not necessary to go into the question whether review is a continuation of the original proceeding or not. Once review is understood as reexamination of a subject or thing, in all fairness, reexamination will have to be done by the person who originally examined the subject or thing. This is because it is only that person who would be able to judge correctly whether the review petitioner has made out the permissible grounds for review such as error apparent on the face of record and whether the original order passed by him needs to be corrected.

38. It would be appropriate in this connection to refer to the judgment of the Supreme Court in **State of Orissa and Ors. v. Commissioner of Land Records & Settlement, Cuttack and Ors.**<sup>34</sup>. In that case the Supreme Court has discussed the fundamental principle relating to review of orders. The relevant observation of the Supreme Court are as under:

---

<sup>34</sup> (1998) 7 SCC 162

“28. It may be argued that if the order of the delegate is tantamount to the order of the principal, then the principal can review such an order of the delegate. This appears to be plausible at first blush but is, in our opinion, not correct because of the intervention of another fundamental principle relating to “review” of orders. The important principle that has to be kept in mind here is that a review application is to be made only to the same Judge or if he is not physically available, to his successor.

29. The decision of the Privy Council in **Maharajah Moheshur Sing v. Bengal Govt.** to which reference was made by learned Senior Counsel, Shri T.L. Vishwanath Iyer, is very apt in this connection. Adverting to the basic concept of review, it was observed by the Privy Council (p.47)

“It must be borne in mind that a review is perfectly distinct from an appeal; that is quite clear from all these Regulations that the primary intention of granting a review was a reconsideration of the same subject by the same Judge, as contradistinguished to an appeal which is a hearing before another Tribunal.”

Their Lordships added:

“We do not say that there might not be cases in which a review might take place before another and a different Judge; because death or some other unexpected and unavoidable cause might prevent the Judge who made the decision from reviewing it; but we do say that such exceptions are allowable only *ex necessitate*.

*We do say that in all practicable cases the same Judge ought to review;...”*

*It is, therefore, clear that the same Judge who disposes of a matter, if available, must “review” the earlier order passed by him inasmuch as he is best suited to remove any mistake or error apparent on the fact of his own order. Again, he alone will be able to remember what was earlier argued before him or what was not argued. In our opinion, the above principle is equally applicable in respect of orders of review passed by quasi-judicial authorities.”*

Judgment of the Privy Council in **Maharajah Moheshur Sing v. Bengal Govt.**<sup>35</sup> referred to by the Supreme Court aptly describes the concept of review and the reason why the review application should be decided by the same judge who passes the original order.

39. Observations of the Supreme Court in **Malthesh Gudda Pooja** can also be advantageously quoted:

*“18. .... An application for review is not an appeal or a revision to a superior court but a request to the same court to recall or reconsider its decision on the limited grounds prescribed for review. The reason for requiring the same Judges to*

---

<sup>35</sup> (1857-60) 7 MIA 283

*hear the application for review is simple. Judges who decided the matter would have heard it at length, applied their mind and would know best, the facts and legal position in the context of which the decision was rendered. ....*

**20.** *Necessarily therefore, when a Bench other than the Bench which rendered the judgment, is required to consider an application for review, there is every likelihood of some tendency on the part of a different Bench to look at the matter slightly differently from the manner in which the authors of the judgment looked at it. Therefore the rule of consistency and finality of decisions, makes it necessary that subject to circumstances which may make it impossible or impractical for the original Bench to hear it, the review applications should be considered by the Judge or Judges who heard and decided the matter or if one of them is not available, at least by a Bench consisting of the other Judge. ....”*

40. At this stage, it needs to be noted that the State Commission in its counter affidavit dated 02/08/2016 has accepted that the Bench which passed the order under review has to adjudicate review proceedings. The State Commission has however added a rider that that does not mean that a new Member cannot be added to the said Bench. While stating that the provisions of the CPC cannot be held to be absolutely binding for conduct of proceedings under the said Act, the State

Commission has accepted that the CPC can act as a guiding light. The State Commission has further stated that the closest principle qua constitution of quorum for deciding a review petition can be traced to the provisions of the CPC and as per the said principle the Bench which passed the order under review has to adjudicate the review proceedings. Therefore, the said principle has been followed while passing the final order on the review petition. It is further stated that the Judges/Members who passed the tariff order dated 31/03/2016 were part of the Bench/quorum which passed the final order on the review petition, with the addition of the Chairperson and therefore it cannot be said that the Bench which passed the original order did not hear the review proceedings. Somewhat similar line of reasoning is adopted by the other Respondents.

41. In our opinion there is a basic fallacy in this reasoning. The original tariff order proceedings were heard by two Members. Original Tariff order dated 31/03/2016 was passed by the said two Members. Review was sought of the original tariff order.

Therefore, it was necessary for those two Members to hear the review application and decide it. The objection raised by the Appellant cannot be met by contending that the review petition was heard by three persons and decided by the same three persons and therefore the requirement of same persons hearing the review petition is complied with. The point to be noted is that the two Members who passed the original tariff order dated 31/03/2016 heard the review petition alongwith the Chairperson and the review petition was disposed of by the said three persons. Such a disposal is the rub of the matter. This does not reflect adherence to the principle that one who hears must decide, which applies with more vigour to review petitions. The review petitions ought to have been disposed of by those who passed the original tariff order dated 31/03/2016. They were very much available to do so. As stated by the Supreme Court in **Gullapalli Nageswara Rao**, any other procedure offends the basic procedure of judicial hearing. It bears repetition to state that this principle applies to quasi judicial Tribunals whose duty it is to mete out justice.



42. On the salutary principle that one who hears must decide we may usefully refer to the Delhi High Court's judgment in **Kwality Restaurant**. In that case, appeals were heard substantially by two Members of VAT Appellate Tribunal ("VAT Tribunal") constituted under the Delhi Value Added Tax Act, 2004 ("Delhi VAT Act") in the absence of the third Member, who had proceeded on leave. The third Member sought to join the Bench and participate in the proceedings. Objection was raised to the appeals being heard by three Members. A writ petition was filed in the Delhi High Court challenging the said procedure. The submissions advanced before the Delhi High Court by the Respondents therein were somewhat similar to the contention raised in this matter. It was urged that the provisions of the Delhi VAT Act contemplate the entire VAT Tribunal (an expression which means all its Members) sitting and hearing cases or appeals preferred to it together, and does not visualize a situation where the Chairman can constitute Benches. It was contended that the Tribunal is a corporate body. The appeal can

be heard during the absence of one Member and the moment that Member returns, there is no irregularity in all the three Members participating in the hearing as long as the hearing is not concluded. While dealing with this submission, the Delhi High Court relying on **Gullapalli Nageswara Rao** observed as under:

*“12. A fundamental premise on which our legal system rests is that no one can suffer an adverse order unheard, or be subjected to an unfair procedure. Procedural safeguards have, over the years, through precedents and court judgments, been recognized as a bulwark against executive excesses or apathy. These rules apply with equal vigor in the case of Tribunals responsible for dispensing justice within their sphere of activity. The VAT Tribunal is one such. A basic component of fair hearing is that a man likely to be affected by a decision, should be heard by an unbiased or impartial tribunal or authority. The corollary to this – and perhaps equally so, is that the officer, or authority who hears the litigant or individual, should issue the order.”[emphasis supplied]*

The Delhi High Court quoted following observations from

**Fulker v. Fulker**<sup>36</sup>.

*“It was most important that all the justices adjudicating upon the evidence on which they were to*

---

<sup>36</sup> (1936) 3 All E.R. 636

*make their findings should hear that evidence and not have it communicated to them through the medium of justices' clerk's note."*

The Delhi High Court further observed that the efficacy and existence of every organ of the State – no less, courts and Tribunals rest on the public confidence they enjoy and any act which tends to undermine that confidence has to be shunned, and wherever necessary cured. Finally, after observing that any procedure or practice which suggests even remotely of unfairness, at one stroke undermines public confidence, and at the same time, sullies fair-play, the Delhi High Court directed that the hearing should be conducted by two Members according to the previous composition. The principles so succinctly discussed by the Delhi High Court apply to hearing of review petitions.

43. It is necessary to refer to the judgment of this Tribunal in **Faridabad Industries Association** on which reliance is placed by the Respondents. In that case, the challenge was to the order dated 13/09/2010 passed by the Haryana Electricity Regulatory

Commission approving the Annual Revenue Requirements and retail supply tariff for the distribution licensees. It was argued that the impugned order was not valid as it was not signed by the third Member who had heard the petitioner along with other Members when the representations of the objectors were considered by the State Commission on 18/02/2010. This Tribunal noted that before the impugned order was passed on 13/09/2010, one of the Members had retired on 24/02/2010. Therefore, it was signed by the Chairperson and the remaining one Member. It is in these facts that this Tribunal referred to Section 93 of the said Act which states that no act or proceedings of the Appropriate Commission shall be questioned or invalidated on the ground of existence of any vacancy or defect in the constitution of the Appropriate Commission. This Tribunal in the circumstances, held that there is no force in the argument that principles of natural justice would be applicable to this case. It must be noted that in this case this Tribunal was not concerned with a review petition. Pertinently, one of the Members had retired and was thus unavailable to sign the order. Besides this

was not a case where one Member was added to the two Members who had passed the original tariff order.

44. Reliance placed on the judgment of this Tribunal in **Amausi Industries Association** is also misplaced for similar reasons. In that case, challenge was to the order dated 19/10/2012 passed by the Uttar Pradesh Electricity Regulatory Commission in the matter of determination of ARR and Tariff for the F.Y. 2012-13. The impugned order was assailed on the ground that the tariff petition was heard by all the three Members namely the Chairman as well as the two Members. The order was reserved. However, the appointment of the Chairman was set aside by the Allahabad High Court. The Supreme Court confirmed the said order on 19/10/2012. On the same day, the impugned order was signed by the two Members. It was contended that there is a serious infirmity in the impugned order. Relying on its judgment in **Faridabad Industries Association**, this Tribunal held that there is no irregularity in the procedure adopted by the two Members in signing the tariff order particularly when the

appointment of the Chairman was set aside by the Supreme Court. Here again this Tribunal was not dealing with a review petition, nor was an additional Member was added to those who originally heard the matter. This judgment is also clearly distinguishable. Besides, as already stated by us, we are dealing only with the question as to who should hear and decide a review petition which arises in these matters. We are not touching the question of passing of the original orders like orders fixing tariff.

45. Extensive arguments have also been advanced on the provisions of the said Act and on the GERC Regulations by both sides to substantiate their submissions. We have already quoted those provisions. As we have seen earlier, Section 94 of the said Act relates to the powers of the Appropriate Commission. Section 94(f) confers on the Appropriate Commission power to review its orders. Section 94(1) makes it clear that in respect of review proceedings, it will have same powers as are vested in a civil court under CPC. Therefore, the Appropriate Commission can review its orders applying the same parameters. Regulation 94 of

the GERC Regulations is on similar lines and makes identical reference to CPC. Order XLVII of CPC and Regulation 72 of the GERC Regulations need to be revisited. If we compare Order XLVII, Rule 1 of CPC with Regulation 72(1) of the GERC Regulations, we find similarity. The grounds of review are identical – They are (a) discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the review petitioner or could not be produced by the review petitioner at the time when the decision/order was passed, b) or some mistake or error apparent on the face of record, c) for any other sufficient reason.

46. Rule 5 of Order XLVII states that where the Judge or Judges or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue to be attached to the Court at the time when the application for review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application

refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same. Essentially, it means the same Judges who passed the original order should decide the review petition unless they are precluded by absence or other cause from hearing the same. It is contended by the Respondents that the absence of a provision akin to this provision in the said Act and in the GERC Regulations is significant and lends support to the Respondents' contention that the review petitions need not always be heard by the same Members.

47. We are unable to accept this submission. We do not attach any importance to absence of provision akin to Rule 5 of Order XLVII in the said Act or in the GERC Regulations. The Appellants have not contended nor are we inclined to hold that the provisions of CPC are stricto sensu applicable to the State Commission. But we have noted that Section 94(1) of the said Act states that while reviewing its decisions, directions and orders, the Appropriate Commission shall have same powers as



are vested in CPC. Even though CPC cannot be held to be stricto sensu applicable to the State Commission, it can act as a guiding light as rightly stated by the State Commission in its affidavit dated 02/08/2016 filed in this Tribunal.

48. In any case, Order XLVII Rule 1 contains the basic principle that a person who desires to obtain review of a judgment or order, must apply for review to the same Court which passed the said judgment or order on the grounds stated therein. Rule 5 is a mere extension of the said principle and, hence, its absence is not material. Regulation 72(1) sets out the same grounds as are stated in Order XLVII Rule 1 on which review application can be filed and reiterates the same principle. It states that any person aggrieved by a decision or order of the Commission may apply for review to the Commission. We are not impressed by the submission that the proceedings before the State Commission are before the State Commission as a whole; that the State Commission functions as a perpetual entity; that the State Commission does not sit in Benches and therefore there is no

illegality if the review petition is decided by three Members though the original order was passed by two Members. Similar argument was advanced before the Delhi High Court in **Kwality Restaurant**. We have extensively referred to this judgment. It may be recalled that in this case, it was argued that the Delhi VAT Act contemplates the entire VAT Tribunal (an expression, which means all its Members) sitting and hearing cases. The Chairman did not constitute Benches. It was urged that the VAT Tribunal is a corporate body and therefore the appeal can be heard during the absence of one Member and the moment that Member returns all the three Members can participate in the hearing. There is no irregularity in such a hearing. The Delhi High Court rejected this submission, inter alia, observing that a basic component of fair hearing is that no one can be subjected to an unfair procedure and that the officer or the authority who hears the litigant should pass the order. We have already held and we reiterate that this principle would apply with more vigour to hearing of review petitions. Thus, when Regulation 72 says that the review petition can be filed to the Commission, in our

opinion, on the settled principles underlying the concept of review, the review petition must be filed before and heard and decided by the same Members who passed the original order if they are available.

49. In this connection we may usefully refer to **Union of India v. Madras Bar Association**<sup>37</sup> where while stating the differences between the Courts and Tribunals the Constitution Bench of the Supreme Court explained how far statutory procedural rules in particular CPC govern proceedings of the Tribunals. Following is the relevant paragraph:

*“45. Though both courts and tribunals exercise judicial power and discharge similar functions, there are certain well-recognised differences between courts and tribunals. They are:*

*(i) Courts are established by the State and are entrusted with the State’s inherent judicial power for administration of justice in general. Tribunals are established under a statute to adjudicate upon disputes arising under the said statute, or disputes of a specified nature. Therefore, all courts are tribunals. But all tribunals are not courts.*

---

<sup>37</sup> (2010) 11 SCC 1

*(ii) Courts are exclusively manned by Judges. Tribunals can have a Judge as the sole member, or can have a combination of a judicial member and a technical member who is an “expert” in the field to which the tribunal relates. Some highly specialized fact-finding tribunals may have only technical members, but they are rare and are exceptions.*

*(iii) While courts are governed by detailed statutory procedural rules, in particular the Code of Civil Procedure and the Evidence Act, requiring an elaborate procedure in decision making, tribunals generally regulate their own procedure applying the provisions of the Code of Civil Procedure only where it is required, and without being restricted by the strict rules of the Evidence Act.”*

Thus even if CPC is not applicable to the Tribunals, basic principle underlying the concept of review that one who passes the original order must decide the review application, acknowledged by the Supreme Court and reflected in Rule 5 of Order XLVII will have to be applied to the review applications filed in the State Commission. Such an approach is in accord with the principles of natural justice. In view of this, it is not necessary for us to refer to the judgments of the Calcutta High Court on which reliance is placed by the Respondents.

50. We can view this issue from another angle. As rightly pointed out by the Respondents, neither the said Act nor the GERC Regulations provides for Benches of the State Commission. Section 82 of the said Act talks about constitution of the State Commission. It states that the State Commission shall consist of not more than three Members including the Chairperson. So the strength of the State Commission is three Members. Section 92(1) of the said Act relates to the proceedings of the Appropriate Commission. It states that the State Commission shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as it may specify. The term 'specified' is defined in Section 2(2) of the said Act as "specified by the regulations made by the Appropriate Commission or the Authority as the case may be". Pertinently, Regulation 16 of the GERC Regulations says that quorum for the proceedings before the State Commission shall be two. Regulation 2(1) defines 'proceeding' to mean and include proceedings of all nature that the Commission may hold in

discharge of its functions under the said Act. Thus, a review petition will fall within the scope of the definition of the term “proceeding”. Regulation 58 is important. Regulation 58(1) says that on conclusion of hearing of the case before the Commission, comprising Chairperson and/or Member(s), who heard the case shall pronounce the judgment. Thus, a case can be heard by only Members also. Regulation 58(3) says that the judgment shall be dated and signed by the Commission at the time of pronouncing it. Thus, the most important requirement is that on the conclusion of hearing those who heard the case must pronounce the judgment and at the time of pronouncing it, it must be dated and signed. Obviously, it has to be signed by those who heard it and pronounced it. Thus, the principle that one who hears must decide is clearly reflected in the GERC Regulations made by the State Commission under the authority of delegated legislation. Needless to say that they are binding. It is not necessary to repeat that this principle applies with greater force to review applications.

51. Our attention was drawn to Section 93 of the said Act which states that no act or proceeding of Appropriate Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Appropriate Commission. Regulation 89 of the GERC Regulations contains an identical provision. It was urged that therefore the impugned order is not liable to be set aside because it was passed by three Members, though the original order was passed by two Members.

52. We have no hesitation in rejecting this submission. As we have already noted, the said Act contains a specific provision relating to constitution of the Appropriate Commission. It states that the State Commission shall consist of not more than three Members, including the Chairperson. Sub-section 5 thereof states that the Chairperson and Members thereof shall be appointed by the State Commission on the recommendation of a Selection Committee referred to in Section 85. Section 84 prescribes the qualifications for appointment of Chairperson and

Members of the State Commission. Section 85 relates to constitution of Selection Committee to select Members of the State Commission. Elaborate procedure to be followed for appointment of Chairman and Members is laid down in this section. The words “defect in the constitution of the Appropriate Commission” will have to be read in the above context. Challenge to the constitution of the Appropriate Commission can be raised inter alia on the ground that the Chairperson or any Member of the Appropriate Commission does not have the required qualification or that the Selection Committee which selected them was not properly constituted. Admittedly, such challenges are raised and proceedings are pending. The word ‘vacancy’ used in Section 93 and Regulation 89 also relates to the constitution of the Commission. Neither Section 93 nor Regulation 89 refers to quorum. Undoubtedly, if a Member retires, or dies or on some such ground is unavailable, some other Member or Members will have to decide the review petition as the doctrine of necessity will then spring into action. But, not



otherwise. The submission that Section 93 and Regulation 89 will save the impugned order must, therefore, fail.

53. Reliance placed by the Respondents on the judgment of the Supreme Court in **Ishwar Chandra** is misplaced. In that case, the Supreme Court was concerned with the quorum of the meeting of the Selection Committee to consider panel of names for the appointment of Vice Chancellor of the Saugar University. The observations of the Supreme Court that when there is no rule or regulations or any other provision, for fixing the quorum, the presence of the majority of members would constitute it as valid meeting and matters considered thereat cannot be held to be invalid will have to be understood in that context. The question as to who should consider and dispose of a review application was not considered by the Supreme Court.

54. It is submitted that the Chairperson joined the two Members to decide the review petitions because of the importance of the issue involved and because public interest

demanded his joining the two members. We do not think that importance of the issue can furnish a ground for deviating from the well established principle that one who hears must decide which applies with more vigour to review applications. In this connection, we may digress a bit and go to criminal law. Before the Constitution Bench of the Supreme Court in **Mohd. Arif, etc. @ Ashfaq v. The Registrar, Supreme Court of India & Ors., etc.**<sup>38</sup>, a request was made that at the review stage in death sentence, two additional judges should be added. This plea was rejected. The majority view was expressed by Justice Nariman in following words.

*“Further, we agree with the submissions of Shri Luthra that a review is ordinarily to be heard only by the same bench which originally heard the criminal appeal. This is obviously for the reason that in order that a review succeeds, errors apparent on the record have to be found. It is axiomatic that the same learned Judges alleged to have committed the error be called upon now to rectify such error. We, therefore, turn down Shri Venugopal’s plea that two additional Judges be added at the review stage in death sentence cases.”[emphasis supplied]*

---

<sup>38</sup> (2014) 9 SCC 737

There can be nothing as important as considering the legality and propriety of death sentence. Yet, the Supreme Court rejected the prayer that for review of the death sentence larger bench should be constituted.

55. It is submitted that there is no provision under the said Act which provides for Benches of the State Commission. The State Commission operates as one body. We have in light of the Delhi High Court's judgment in **Kwality Restaurant** already rejected this submission. It is urged that conjoint reading of Section 92(2) and Regulation 17 of the GERC Regulations indicates that the Chairperson or any member, if present shall attend the proceedings and be part of the decision making process. It is submitted that ideal situation would be that all the three members who have distinct qualifications should participate. It is contended that out of necessity, if there is a vacancy of one member, the other two members hear the matter. It is submitted that in this case, the Chairperson's post was vacant and by the time the review petition was filed the post of Chairperson was

duly filled and, therefore, to carry out the intent and objective of the mandate provided by the said Act, the Chairperson was made part of the proceedings. We find no hesitation in rejecting this submission. When the two members had passed the tariff order were available there was no reason for the Chairperson to join the review proceedings on the specious ground of carrying out the intent of the said Act. This is opposed to basic principle underlying the concept of review. There is no need to assume that the two Members who passed the original order would not be able to appreciate the alleged important issues. In fact, they are best suited to deal with the contentions raised in the review petition and find out whether there is any error apparent on the face of the record.

56. In view of our conclusion that the impugned order suffers from grave illegality, we must set it aside. Relying on ***Kraipak***, it is submitted by the Appellant that in case this Tribunal comes to the conclusion that the impugned order needs to be set aside, this Tribunal should not remand the matter to the Tribunal, but

decide it itself. It is submitted that the minds of the original two Members cannot remain free of bias and influence projected by the third Member. We must note that the Respondents have strenuously contended that **Kraipak** will not be applicable here because in that case, there were allegations of personal bias which are absent here. On this issue, we are inclined to agree with the counsel for the Respondents. The facts of **Kraipak** are totally different from the facts of this case. There, the Supreme Court was concerned with the proceedings of the Selection Board which selected officers to the Indian Forest Service and the person who was selected participated in the deliberations of the Selection Board. There were allegations of personal bias. It is in this context that the Supreme Court observed that the other Members of the Selection Board were unaware of the extent to which the opinion of the selected Member influenced their conclusions. A case where personal bias was the main plank of the aggrieved persons cannot be equated with this case. In any case, we are of the view that it is not proper for us to decide the review petition on merits at this stage. The Members who passed

the original order are very much there. They will have to rehear the matter independently and uninfluenced by the impugned order and pass appropriate order.

57. In the circumstances, we set aside the impugned orders dated 16/06/2016 and 01/07/2016 passed by the State Commission. We remand the matter to the State Commission. We direct the Members who passed the original tariff order to hear the review petitions afresh and pass appropriate order thereon as early as possible and at any rate within a period of four months from the date of receipt of this order. Parties shall cooperate. We make it clear that we have not expressed any opinion on the merits of the case. The appeals are disposed off in the aforestated terms.

58. In view of the above, the interim applications are also disposed of.

59. Pronounced in the Open Court on this **30<sup>th</sup> day of March,**  
**2017.**

**I.J. Kapoor**  
**[Technical Member]**

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

✓ **~~REPORTABLE/NON-REPORTABLE~~**