

**COURT-II**  
**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY**  
**(Appellate Jurisdiction)**

**IA NO. 1882 OF 2018 IN**  
**(RP) DFR NO. 4063 OF 2018 IN 160 OF 2016 ON THE FILE OF THE**  
**APPELLATE TRIBUNAL FOR ELECTRICITY, NEW DELHI**

**Dated: 23<sup>rd</sup> January 2019**

**Present: Hon'ble Mr. Justice N. K. Patil, Judicial Member**  
**Hon'ble Mr. S. D. Dubey, Technical Member**

**In the matter of:**

**M/s. Print Wizards**

Through Its Proprietor, Mr. Pradeep Bajaj,  
A-45, Ground Floor, Narina Industrial Area,  
Phase-II, New Delhi -110028

..... Appellant(s)

**Versus**

**Tata Power Delhi Distribution Limited**

(Formerly known As North Delhi Power Limited)  
Connection Management Group  
Through its General Manager,  
Corp Office : NDPL House,  
HUDSON Lane Kingsway Camp  
Delhi - 110009

**Delhi Electricity Regulatory Commission**

Through its Secretary,  
Viniyamak Bhavan, C-Block,  
Shivalik, Malviya Nagar,  
New Delhi-110 017

..... Respondent(s)

Counsel for the Appellant (s) : Mr. Sanjay Kumar

Counsel for the Respondent(s): -

**ORDER**

**PER HON'BLE MR. S. D. DUBEY, TECHNICAL MEMBER**

1. The Review Petitioner/Appellant has prayed for the following relief:-

- 1) That this Hon'ble Tribunal may kindly set aside the Judgment dated 19/09/2018 passed by this Hon'ble Tribunal in Appeal No.160 of 2016 titled M/s Print Wizards Through Its Proprietor Pardeep Bajaj Vs/s Tata Power Delhi Distribution Limited (Formerly known As North Delhi Power Limited) & Anr..
- 2) That this Hon'ble Tribunal may kindly direct the Respondent to compensate the Appellate with an amount of Rs. 1,00,000/- (Rupees One Lakh only) towards penalty as per Section 142 of the Electricity Act, 2003.
- 3) That this Hon'ble Tribunal may kindly direct the Respondent to compensate the Appellant with an amount of Rs. 1,000/- (Rupees One thousand only) for each day of default, i.e, from 23.11.2010 to up to date towards penalty as per Sub-Section (3) of Section 43 of Electricity Act, 2003.
- 4) That this Hon'ble Tribunal may kindly award the compensation in favour of the Appellant as defined U/S 57 of the Electricity Act, 2003.

- 5) That the Hon'ble Tribunal may kindly Award the litigation charges in favour of the Appellant.
  - 6) That this Hon'ble Tribunal may kindly pass any other order in favour of Appellant which this Hon'ble Commission deems fit and proper and in interest of justice.
2. The present Review Petition has been preferred by the Review Petitioner/Appellant M/s Print Wizards under Section 157 read with Section 120(F) of the Electricity Act, 2003 for review of the Judgment of this Tribunal dated 19.09.2018 in Appeal No. 160 of 2016.
  3. The Review Petitioner/Appellant M/s Print Wizards had filed its main Appeal No. 160 of 2016 under Section 111 (1) read with Section 120(F) of the Act against the order dated 16.06.2015 passed by Delhi Electricity Regulatory Commission (DERC/Respondent Commission). The said Appeal was adjudicated and after careful considerations of the submissions and pleadings of the Review Petitioner/Appellant and the Respondents, the Judgment was pronounced by this Tribunal on 19.09.2018.

4. Though this matter posted for consideration being IA No.1882 of 2018 for waiver of court fee. However, the matter is taken up for hearing regarding maintainability of the Review Petition by the Review Petitioner/Appellant and we have heard learned counsel, Mr. Sanjay Kumar, appearing for the Appellant at considerable length of time.
  
5. From above, it is significant to note that, the entire grounds, pleadings, arguments etc. were made by the Review Petitioner/Appellant in the main Appeal only to contest on the same prayers which were duly considered by this Tribunal in detail while adjudicating the said Appeal filed by the Review Petitioner/Appellant and passing the referred judgment dated 19.09.2018. Neither any additional nor fresh ground has been made by the review petitioner now which otherwise, strengthen its pleadings in support of the intended review of the judgment.
  
6. It would thus appear that the points on which the Review Petitioner/Appellant has now preferred the instant Review petition is prime facie to set aside the referred judgment dated 19.09.2018 and

to reopen the whole matter contained in the original Appeal afresh and make out entirely new case thereon. In our considered view, neither setting aside of the earlier judgment nor the fresh adjudication by this Tribunal on same grounds/prayers is permissible under the law through a review petition. Even on a specific query, learned counsel for the Appellant failed to cite any law under which the instant petition is permissible or admissible.

7. The Review Petition has been necessitated by the Review Petitioner/Appellant under Section 157 read with Section 120 (2) (f) of the Electricity Act, 2003 which reads as under:-

*“157. Review – The Special court may, on a petition or otherwise and in order to prevent miscarriage of justice, review its judgment or order passed under section 154, but no such review petition shall be entertained except on the ground that it was such order passed under a mistake of fact, ignorance of any material fact or any error apparent on the face of the record.*

*Provided that the Special Court shall not allow any review petition and set aside its previous order or judgment without hearing the parties affected”.*

**“120. Procedure and powers of Appellate Tribunal**

*(2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters,*

*namely:-*

.....  
.....

(f) *reviewing its decisions;*

8. As would be seen from the above that Section 157 of the Act relates to the review by a Special Court, its judgment or order passed under Section 154. In this regard, it is clarified that neither this Tribunal is a special court nor the reference judgment has been passed under Section 154 of the Act. On this ground too, the Review Petition is not at all maintainable in the eye of law.

9. Section 120 (2) (f) of the Act thus, confers power to review akin to Section 114 of the Code of Civil Procedure, 1908. Therefore, the decisions of the Hon'ble Supreme Court relating to review jurisdiction are applicable for interpreting the said provisions. Once a judgment is pronounced and an order passed, the court becomes *functus officio* and it cannot thereafter arrogate itself to re-hear the case and re-open the matter. The dictum of the Hon'ble Apex Court in a catena of judgments is that a party is not entitled to seek a review of the judgment merely for the purpose of a re-hearing and a fresh decision of the case.

10. In view of the well settled law laid down by the apex court in catena of judgments, it has been held that the error contemplated for exercise of the review jurisdiction is an error which renders a judicial decision as manifestly incorrect. It is not the case that there is anything error or omission as sought to be contended by the Review Petitioner purportedly in respect of the judgment dated 19.09.2018 in Appeal No. 160 of 2016 which according to the review petitioner requires exercise of review jurisdiction by this Tribunal.
11. In fact, the review petitioner in the guise of the present petition has virtually sought a rehearing of the entire proceedings. The review petitioner cannot avail of this mode of legal redress as following two main criteria is to be satisfied for entertainment for a review petition:-
- (i) *Proof that even after exercise of due diligence some facts were not to the knowledge of the review petitioner, when the original order was passed.*
  - (ii) *Mistake or error apparent from the face of record.*

12. In the instant case, the review petitioner has failed to prove or establish any of the above mandatory criteria for review of the original judgment of this Tribunal. The Review Petitioner/Appellant under the guise of the present review petition is seeking to reopen the entire case which is impermissible under the review jurisdiction as held by the Hon'ble Apex Court as under:-

***“Review is not appeal in disguise, where erroneous decision can be reheard and corrected but lies for patent error. Error which is not self-evident and has to be detected by process of reasoning can hardly be called as error apparent from face of record.”***

**Emphasis supplied**

13. Further, the Hon'ble Supreme Court in catena of its judgment has laid down the scope and ambit of review as under:-

***Haridas Das Vs. Usha Rani Banik (Smt.) & Ors. – 2006 (4) SCC 78***

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

**Emphasis supplied**

"18. It is also pertinent to mention the observations of this Court in the case of Parsion Devi v. Sumiri Devi(1997(8) SCC 715). Relying upon the judgments in the cases of Aribam's (supra) and Smt. Meera Bhanja (supra) it was observed as under :

"19. Under Order XLVII, Rule 1, CPC a judgment may be open to review inter alia, if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order XLVII, Rule 1, CPC. In exercise of the jurisdiction under Order XLVII, Rule 1, CPC it is not permissible for an erroneous decision to be reheard and corrected. A review petition, it must be remembered has a limited purpose and cannot be allowed to be an appeal in disguise."

**Emphasis supplied**

**M/s Northern India Caterers (India) Pvt. Ltd. Vs. Lt. Governor of Delhi – 1980 (2) SCC 167**

"It is well settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so. In a civil proceeding, an application for review is entertained only on a ground mentioned in XLVII rule 1 of the Code of Civil Procedure, and in a criminal proceeding on the ground of an error apparent on the face of the record. (Order XL rule 1, Supreme Court Rules, 1966). But whatever the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will

*not be reconsidered except "where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility."*

**Emphasis supplied**

**Kamlesh Verma Vs. Mayawati & Ors. – 2013 (8) SCC 320**

15.....

16. *“It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review.*

17. *In a review petition, it is not open to the Court to re-appreciate the evidence and reach a different conclusion, even if that is possible. Conclusion arrived at on appreciation of evidence cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. This Court, in Kerala State Electricity Board v. Hitech Electrothermics & Hydropower Ltd. & Ors., [JT 2005 (7) SC 485], held as under:*

10. ....*In a review petition it is not open to this Court to reappreciate the evidence and reach a different conclusion, even if that is possible. Learned counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by*

*this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition. The appreciation of evidence on record is fully within the domain of the appellate court. If on appreciation of the evidence produced, the court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. It has not been contended before us that there is any error apparent on the face of the record. To permit the review petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise.'*

*19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII Rule 1 of CPC. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction”.*

**Emphasis supplied**

14. In view of the above well settled law laid down by the Apex Court, it is manifest that the following grounds of review have been stipulated by the statute which govern whether a Review Petition is maintainable or non-maintainable as under:-

**(a) When the review will be maintainable:-**

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within

knowledge of the petitioner or could not be produced by him;

- (ii) Mistake or error apparent on the fact of the record;
- (iii) Any other sufficient reason.

The words any other sufficient reason has been interpreted in *Chhajju Ram Vs. Neki*, 1922 AIR (PC) 112 and approved by this Court in *Moran Mar Basselios Catholicos Vs. Most Rev. Mar Poulouse Athanasius & Ors.*, 1955 1 SCR 520, to mean a reason sufficient on grounds at least analogous to those specified in the rule. The same principles have been reiterated in *Union of India Vs. Sandur Manganese & Iron Ores Ltd. & Ors.*, 2013 8 JT 275.

**(b) When the review will not be maintainable:-**

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- (ii) Minor mistakes of inconsequential import.
- (iii) Review proceedings cannot be equated with the original hearing of the case.
- (iv) Review is not maintainable unless the material error, manifest on the fact of the order, undermines its soundness or results in miscarriage of justice.
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.
- (vi) The mere possibility of two views on the subject cannot be a ground for review.

- (vii) The error apparent on the fact of the record should not be an error which has to be fished out and searched.
- (viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.
- (ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.

15. A perusal of the review petition as filed by the Review Petitioner/Appellant, reveals that the grounds raised therein in support of purported review sought are legally untenable and outside the ambit of review proceeding. Further the grounds of the review adduced in the review petition do not fall within the tenets of review as propounded by the Hon'ble Supreme Court in a catena of judgments.

16. In view of the above, it is emerged conclusively that the case in the present review petition **neither** relates to any 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 him at the time when the judgment was pronounced **nor**

any mistake or error apparent on the face of the judgment has specifically been pointed out and no any other sufficient reason or ground has been made out by the review petitioner.

17. Therefore, we are of the considered view that there is no merit in the instant Review Petition necessitating review/re-consideration and the same is frivolous, vexatious and abuse process of court. Hence, the Review Petition is dismissed as misconceived.

**IA NO. 1882 OF 2018 (for waiver of court fee)**

In view of the disposal of the Review Petition in DFR No.4063 of 2018 as not maintainable, the relief sought in this IA No.1882 of 2018 does not survive for consideration. Hence stands disposed of.

Pronounced in the open court on this day of **January 23<sup>rd</sup>, 2019.**

**(S.D. Dubey)**  
**Technical Member**

**(Justice N.K. Patil)**  
**Judicial Member**

**REPORTABLE / ~~NON-REPORTABLE~~**

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