

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

REVIEW PETITION NO. 03 OF 2017

IN

APPEAL NO. 185 OF 2014

Dated: 22nd March, 2017

**Present: HON'BLE MRS. JUSTICE RANJANA P. DESAI, CHAIRPERSON
HON'BLE MR. T. MUNIKRISHNAIAH, TECHNICAL MEMBER**

IN THE MATTER OF

Rajasthan Rajya Vidyut Utpadan Nigam Limited

Through Executive Engineer (Commercial),
Vidyut Bhawan, Jyoti Nagar,
Janpath, Jaipur – 302005

..... Review Petitioner

VERSUS

- 1. The Chairman and Managing Director**
Jaipur Vidyut Vitaran Nigam Limited
Vidyut Bhawan, Jaipur – 302 005
- 2. The Chairman and Managing Director**
Ajmer Vidyut Vitaran Nigam Limited
Vidyut Bhawan, Panchseel
Maharwali Road, Ajmer – 305 004
- 3. The Chairman and Managing Director**
Jodhpur Vidyut Vitaran Nigam Limited
New Power House, Industrial Area
Jodhpur – 342 003
- 4. The Secretary**
Rajasthan Electricity Regulatory Commission
Vidyut Bhawan, Jyoti Nagar
Janpath, Jaipur – 302 005

..... Respondents

Counsel for the Appellant(s) ...	Mr. M.G. Ramachandran Ms. Ranjitha Ramachandran Mr. Shubham Arya Ms. Poorva Saigal Ms. Anushree Bardhan
Counsel for the Respondent(s)...	Mr. K.S. Dhingra for R-1 Mr. R.K. Mehta Mr. Abhishek Upadhyay Mr. Himanshi Andley for R-4

ORDER

PER HON'BLE SHRI T. MUNIKRISHNAIAH, TECHNICAL MEMBER

1. In this Review Petition, the Review Petitioner is seeking review of the Judgment dated 04.07.2016 passed by this Tribunal in Appeal No. 185 of 2014.
2. In the impugned order dated 04.07.2016, while disposing of Appeal No. 185 of 2014, this Tribunal considered the following issues:
 - a) *Disallowance of reversal interest of Rs. 90.96 crore on subvention receivable from the Government as an expense for the purpose of tariff,*
 - b) *Disallowance of depreciation of Rs. 127.52 crore of FY 2009-2010 with respect to depreciation on leased assets bought back by RVUN.*
 - c) *Disallowance of actual payment made by the Appellant for the buy-back of assets as adjustment in form of security deposit from the aforesaid sale consideration of Rs. 172.45 crore on buy-back/purchase of the assets sold to different financial institutions?*
 - d) *Disallowance of Works Contract Tax liability and the advance payment made by the Petitioner related thereto to BHEL Ltd”.*
3. During the hearing of the Review Petition, the Counsel of the Review Petitioner restricted to two issues namely (a) disallowance of revenue requirements the carrying cost for the subvention amount which was progressively paid by the Government of Rajasthan and (b) the

advance payment made by the Petitioner to BHEL Ltd. related to Works Contract Tax (WCT).

4. This Tribunal, after hearing the arguments of both the Counsel framed the following issues:

- a) Whether the State Commission is justified in disallowing the carrying cost towards interest on the receipt of the subvention amount from the State Government?
- b) Whether the State Commission erred in disallowing the Works Contract Tax liability and the advance payment made by the Petitioner related thereto to BHEL Ltd.?

5. The Review Petitioner seeks review of findings of this Tribunal on these issues. The contention of the Review Petitioner is quoted below:

- a) This Tribunal has proceeded on the basis that the matter in the issue was in regard to the amount of subvention receivable by the Petitioner from the State Government. This is an error apparent on the face of the record in as much as there was no issue on the subvention receivable from the State Government. The issue was in regard to the progressive payment of the subvention by the State Government, namely, whether the State Government can be compelled or otherwise made liable to bear the interest costs for such progressive payment. The subvention, which the State Government had proposed, is a gratuitous payment, namely, by way of a grant and the same cannot be claimed by the Petitioner as a matter of right. Further, the Review Petitioner contests that there is no provision in the Electricity Act, 2003 or in any other law whereby the Petitioner as a Government Utility could compel

the State Government to give the subvention amount or in case the progressive payment of such amount voluntarily agreed to by the State Government to pay interest or carrying cost.

The issue therein was not in regard to the amount of 'subvention receivable' but with regard to the interest on such 'subvention receivable' on account of progressive payment. The amount of subvention receivable of Rs. 491.87 crore is being paid and adjusted and thereby reducing the revenue requirements of the Petitioner to be recovered from Respondents No. 2 to 4. However, the interest on such amount considered by the Petitioner as payable and being shown as accrued income in the books of the Petitioner has not been given by the Government of Rajasthan. The Petitioner was seeking the consequence of the above interest not being given and was not seeking any order in regard to the principal amount of Rs. 491.87 crore.

- b) In regard to the adjustment of the amount paid by the Petitioner to M/s BHEL Limited for the Works Contract Tax deducted at source, there is a fundamental mistake. This Tribunal has failed to take into account that the arrangements between the Petitioner and M/s BHEL did not in any manner whatsoever altered the capital expenditure incurred by the Petitioner on the works undertaken by M/s BHEL. The Petitioner had granted a contract to M/s BHEL for the supply, erection and commissioning of the power stations work. The

capital cost incurred remains the same. Out of the capital expenditure to be incurred by the Petitioner for the works undertaken and payable to M/s BHEL, the Petitioner had deducted an amount and deposited the same with the Tax Authorities as tax deducted at source. The arrangement entered into between the Petitioner and BHEL was in relation to such amount deducted at source. The Petitioner was not claiming any extra expenditure and neither BHEL was giving any reduction or deduction from the capital cost to be paid to M/s BHEL in the above arrangements. The arrangement was a bilateral arrangement for deciding on the methodology of payment of the actual capital cost incurred and not by way of any reduction or increase in the capital cost.

6. Thus, it appears to be the case of the Review Petitioner that the Judgment of this Tribunal suffers from errors apparent on the face of record. We must examine whether Review Petitioner's contention is right or not.
7. Before we consider the Review Petitioner's contention, it is necessary to see the scope of power of review. Several judgments have been cited on this aspect. They reiterate the same principles. Suffice it to quote the principles laid down by the Supreme Court in **Kamlesh Verma v. Mayawati & Ors.** Following is the relevant extract:

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

20.1. When the review will be maintainable:

- (i) *Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;*
- (ii) *Mistake or error apparent on the face of the record;*
- (iii) *Any other sufficient reason.*

The words “any other sufficient reason” have been interpreted in Chhajju Ram v. Neki, AIR 1922 PC 112 and approved by this Court in Moran Mar Basselios Catholicos v. 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 v. Sandur Manganese & Iron Ores Ltd. & Ors.

20.2. When the review will not be maintainable:

- (i) *A repetition of old and overruled argument is not enough to reopen concluded adjudications.*
- (ii) *Minor mistakes of inconsequential import.*
- (iii) *Review proceedings cannot be equated with the original hearing of the case.*
- (iv) *Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.*
- (v) *A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.*
- (vi) *The mere possibility of two views on the subject cannot be a ground for review.*
- (vii) *The error apparent on the face of the record should not be an error which has to be fished out and searched.*
- (viii) *The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.*
- (ix) *Review is not maintainable when the same relief sought at the time of arguing the main matter had been negative.”*

8. We do not agree with the contention of the Review Petitioner. This Tribunal has gone into the details of the issue under consideration

in-depth and pronounced the judgment. We have decided in the Judgment dated 04.07.2016 with respect to interest on subvention amount of Rs. 90.96 crore and not with regard to subvention amount of 491.87 crore. We have considered the views of the State Commission while dealing with this issue. The relevant part of the Commission's view is quoted below:

“Commission's Views:

2.34 The Commission agrees with the stakeholders that the interest on subvention receivable from the Government cannot be considered as an expense for the purpose of tariff and has to be borne by the petitioner. Further, it is also desirable that RVUN should take up the matter with the State Government for realization of Rs. 491.87 crore appearing as “Subvention receivable from State Govt.” in accounts books”.

As per the above views of the Commission, we came to the conclusion that the Review Petitioner has not spent this amount and the same cannot be considered as an expense so as to burden the consumers in the State of Rajasthan. Accordingly, we have not considered the reversal of interest on subvention receivable from the Government as an expense for the purpose of tariff to safeguard the consumers.

9. So far as reduction of capital cost on account of Works Contract Tax (WCT), we have examined the legality of the relevant part of the impugned order which is quoted under:

“Reduction on account of Works Contract Tax (WCT):

3.23 The RVUN, vide Schedule-30 “Notes on Accounts “at para No. 33 has mentioned that BoD in its 154th meeting held on 05.03.2009 decided to refund to BHEL Rs. 59.82 crore, the equivalent amount of WCT deducted from their bills subject to the condition that BHEL shall promptly refund entire amount including interest, if any, to the RVUN within 7 days from the date of receipt of the same by BHEL from the Commercial Taxation Department. On specific query, RVUN has

intimated that the above amount of Rs. 59.82 crore includes an amount of Rs. 9.89 crore on account of KTPS Unit-7.

3.24 In this regard, the Commission has observed on the basis of the documents furnished by the Petitioner that WCT was deducted at source by the Petitioner on the supply portion of contracts awarded to M/s BHEL. M/s BHEL in their representation to petitioner have also contended that the supply from BHEL Units located outside Rajasthan is not liable for WCT deduction. Considering the above, the petitioner has refunded this amount to M/s BHEL against a corporate guarantee which states that M/s BHEL would get its sales tax assessment done and refund the work contract tax amount received from the tax authorities together with interest thereon to the petitioner. The Commission has, therefore, reduced the amount of Rs. 9.89 crore from the BTG package of capital cost.”

10. The State Commission, in the impugned order, has clearly observed on the basis of the documents furnished by the Review Petitioner that WCT was deducted at source by the Appellant on the supply portion of contracts awarded to M/s. BHEL. M/s. BHEL in its representation to the Review Petitioner has also contended that the supply from BHEL units located outside Rajasthan is not liable for WCT deduction. On that basis, the Review Petitioner has refunded this amount to M/s. BHEL against a corporate guarantee which clearly states that M/s. BHEL would get its sales tax assessment done and refund the work contract tax amount received from the tax authorities together with interest thereon to the Review Petitioner. On this basis, the State Commission has reduced the amount of Rs.9.89 crore from the BTG package of capital cost. Thus, this Tribunal did not find any perversity or illegality in the finding of the State Commission in the order dated 13.06.2011.
11. This Tribunal has given a detailed reasoning for taking the view that it has taken after considering the Review Petitioner and Respondent's contention. Re-consideration of the issues cannot be undertaken by us in as much as it is only the material error or errors manifest on

the basis of the record or patent error which could be considered in a Review Petition. Further, the Counsel of the Respondent argued that the Review Petitioner did not raise the review submissions at the time of hearing of the main Appeal and requested not to consider the submissions made by the Review Petitioner in the Review Petition. Further, the Review lies for correcting patent error.

12. We do not see any patent error or error apparent on the face of record in the order of which review is sought.

Review Petition is therefore, dismissed.

Pronounced in the Open Court on this **22nd day of March, 2017.**

(T. Munikrishnaiah)
Technical Member

(Justice Ranjana P. Desai)
Chairperson

√ REPORTABLE/NON-REPORTABLE