

BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY
Appellate Jurisdiction, New Delhi

Dated this 31st day of January, 2008

Coram : Hon'ble Mr. H. L. Bajaj, Technical Member
Hon'ble Ms. Justice Manju Goel, Judicial Member

Review Petition No. 31 of 2007
in appeal No. 20 & 77 of 2007

IN THE MATTER OF:

M.P. Electricity Regulatory Commission

Urja Bhawan, Shivaji Nagar,
Bhopal (M.P.) 46216

.....Petitioner

Versus

1. **Universal Cables Ltd.**

P.O. Birla Vikas,
Satna M.P. 461 016.

.....Respondent No.1
(Appellant No. 1 in both the appeals)

2. **M/s. Satna Cement Works**

P.O. Birla Vikas,
Satna M.P. 461 016.

.....Respondent No.2
(Appellant No. 2 in both the appeals)

3. **M.P. Poorva Kshetra Vidyut Vitran Co. Ltd.**

Block No. 7, Shakti Bhawan,
Rampur, Jabalpur (MP) 482008

.....Respondent No.3
(Respondent No. 2 in both the appeals)

For the Review petitioner(s) : Mr. Sakesh Kumar Adv.

For the Respondent(s) : Mr. Jayanat Bhushan Sr.
Adv. with Mr. N.M. Sharma
& Ms. Sweta Gupta

Review Petition No. 32 of 2007
in appeal No. 20 & 77 of 2007

IN THE MATTER OF:

M.P. Poorva Kshetra Vidyut Vitran Co. Ltd.

Block No. 7, Shakti Bhawan,
Rampur, Jabalpur (MP) 482008Petitioner
(Originally Respondent No. 2 in both appeals)

Versus

1. **Universal Cables Ltd.**
P.O. Birla Vikas,
Satna M.P. 461 016.Respondent No.1
(Appellant No. 1 in both appeals)
2. **M/s. Satna Cement Works**
P.O. Birla Vikas,
Satna M.P. 461 016.Respondent No.2
(Appellant No. 2 in both appeals)
3. **M.P. Electricity Regulatory Commission**
Urja Bhawan, Shivaji Nagar,
Bhopal (M.P.) 46216Respondent No.3
(Appellant No. 1 in both appeals)

For the Review petitioner(s) : Mr. Ravi Shankar Parsad Sr.
Adv. with
Mr. Siddartha Singh Chauhan

For the Respondent(s) : Mr. Jayanat Bhushan Sr.
Adv. with Mr. N.M. Sharma
& Ms. Sweta Gupta

J U D G M E N T

Ms. Justice Manju Goel, Judicial Member

1. The two review petitions seek review of judgment dated 22.8.2007 passed in appeals No. 20/07 and 77/07 which were filed by the respondents No. 1 & 2. The two respondents in the two appeals challenged the two orders dt. 8.10.06 and 3.4.07 passed by the review petitioner the M.P. Electricity Regulatory Commission (MERC or Commission for short) on a prayer made the by the respondents for permission to supply electricity from the captive power plant at the premises of M/s. Satna Cement works to the premises of M/s. Universal Cables Ltd. The two concerns the respondent No. 1 & 2 herein share a common boundary. The Commission held that although a captive generating plant had a right of 'open access' for the purpose of carrying electricity from its plant to the destination of its use as provided by Section 9 (2) of the Electricity Act, 2003, M/s. Satna Cement Works was not entitled to supply its surplus power to M/s. Universal Cables Ltd. without a license for this purpose. The Commission also observed that although the two concerns were willing to hand over the dedicated line to the second respondent that would not amount to fulfilling the requirement of law. Before the two appeals could be disposed of by this Tribunal, section 9 of The Electricity Act

2003 was amended and the following proviso was inserted therein:

“ Provided further that no licence shall be required under this Act for supply of electricity generated from a captive generating plant to any licensee in accordance with the provisions of this Act and the rules and regulations made there-under and to any consumer subject to the regulations made under sub-section (2) of section 42”

2. We observed in our judgment that although no license was required for supply of electricity from captive power plant to another consumer, such supply was still required to be regulated by the regulations under sub section 2 of section 42. The basic objection of the Commission to permit supply of electricity from the CPP of the respondent No. 2 to the respondent No. 1 had thus come to an end.
3. Section 42 which deals with “open access” also underwent an amendment. As per this amendment “ open access” could be allowed subject to payment of surcharge. The two appellants expressed willingness to pay surcharge which they may be required to pay under the regulations. The appellants did not intend to get the supply from the existing line of the distribution company of the area. Instead they proposed to set up a dedicated feeder between the two premises. They, however, stated that on construction of dedicated feeder, the same would be handed over to the

distribution licensee of the area viz. the respondent No. 2. This meant that the respondent No. 2 would have the control over the line. We also observed that although the “open access” as generally understood viz. through the existing grid or a distribution line would not be required, but surcharge and other charges could be imposed as the line would finally belong to the distribution licensee who would have all control including facility of metering. The following portion of our judgment is required to be quoted for the purpose of deciding the review petition:

“ The appellants have stated in so many words that on the construction of the dedicated feeder line the same would be handed over to the respondent No.2. This obvious means that respondent No.2 can make its own switching and metering arrangements as may be necessary for checking the supply of electricity to the two appellants by it as well as consumption and supply of electricity by the appellant No. 2.

9. It is true that the supply of electricity from the CPP of appellant No. 2 to the appellant No. 1 will not be made through the existing grid lines of the respondent No. 2. Therefore open access, as it is generally understood, will not be required through the grid or a distribution line. Nonetheless, since the dedicated feeder line will be operated, maintained and will

eventually belong to respondent No. 2, the respondent No. 2 can also impose such charges as may be imposed for open access through its line.

10. We, therefore, set aside the impugned orders and dispose of the two appeals holding that appellant No. 2 is entitled to supply electricity from its CPP to the appellant No. 1 subject to the payment of charges as imposed by Regulations framed under section 42, of The Electricity Act 2003, including the charges mentioned above, and subject to such control of the respondent No. 2 as may be necessary to avoid any loss to the respondent No. 2 by possible resale of electricity supplied by it”

4. It is contended in the review petition that the judgment ignored the written submission of the Commission, at paragraph 5,12,13,16,17 and 18, wherein it had been pointed out that “open access” could only be granted under the terms of regulations framed under section 42 (2) read with section 181 of the Electricity Act 2003. The Commission submits that the core issue is whether the present transaction, within the provisions of Electricity Act 2003 and regulations framed thereunder, at all qualifies as an “Open access” transaction. The Commission submits that “open access” obviously required the transmission/wheeling of power through the transmission

lines of the distribution system of the licensee. It further submits that to hold that transmission of electricity through a dedicated transmission line constructed by the generator or consumer constitutes an “open access” transaction, will be contrary to the statutory provisions.

5. It is contended that the transaction in question which does not use the existing system or line of the licensee is not an “open access” transaction and therefore such a transaction is not permitted or covered by section 42 and other provisions of the Electricity Act 2003. The review is based on the plea that the judgment of this Tribunal has not conclusively decided whether the supply of electricity from M/s Satna Cement Works to M/s. Universal Cables Ltd. will amount to “open access” transaction and hence the same calls for a review.
6. The area distribution Company viz M.P. Poorva Kshetra Vidyut Vitran Company Ltd. has also filed Review Petition No. 32/07 on the same terms.

The two review petitions are opposed by the respondents (appellant in appeals No. 20 & 77 of 2007). We have heard all the parties to these two review petitions.

7. The review petitioners' must show some error apparent on the face of the judgment in order to get the judgment dt. 22.8.07 reviewed. In our considered opinion no error apparent is shown. During arguments Mr. Ravi Shankar Parsad learned Sr. Advocate appearing for the review petitioner vehemently submitted that the feeder line between the two respondents (appellants in the appeal Nos. 20 and 77 of 2007) cannot be part of either the grid or the distribution system and therefore flow of energy from the captive power plant to its neighbour cannot amount to taking "open access" and therefore cannot be allowed. This argument is in the nature of challenge to the merit of the judgment. The learned counsel is in fact inviting this Tribunal to go into the main issues raised in the two appeals all over again and arrive at a different conclusion. This is possible only in an appeal and not in review. We can neither set aside the judgment nor confirm our judgment by passing another judgment when there is no apparent error in the judgment. The portion of the judgment extracted above shows that we have sufficiently said what was required to be said for disposal of the appeal and there is no omission which may warrant a review. Therefore, we have no option but to dismiss the review petition.

8. However we may add that during the hearing of the two review petitions we did mention that the Electricity Act 2003 has to be interpreted so as to advance the aims and objects of the Electricity Act 2003 and National Electricity Policy. One of the objects of the Electricity Act 2003 is to encourage generation of electricity including captive generation. The National Electricity Policy also endeavors to tap the electricity generated by the captive generating plants. An interpretation which defeats these objects of the Act would be improper.

9. We may further add here that Mr. Ravi Shankar Parsad could not point out any prejudice that was caused to the distribution company viz. M.P. Poorva Kshetra Vidyut Vitran Co. Ltd. by our judgment dated 22.08.07, now sought to be reviewed.

10. The respondents have raised the objection of limitation. The power of review is granted to this Tribunal by section 120 of The Electricity Act 2003. Section 120 lays down that the Tribunal shall not be bound by the procedures laid down by the code of Civil Procedure 1908. However, it says that for the purpose of discharging the functions under the act the Tribunal will be vested with the same power as in Civil court under the code of civil procedure inter-alia for reviewing its decision. It is not disputed that the review can

be granted by this Tribunal on principles or grounds available under order 47 rule 1 of the Civil Procedure Code.

11. No time limit for filing a review petition is prescribed in the Electricity Act or in the regulations framed under the Act. The respondent has prayed that the review petition should be dismissed on account of limitation because a review petition before a civil court can be filed only within 30 days and as per the language of section 120, the limitation for filing a review petition before a Civil court will apply to a review petition before this Tribunal. The review petition is filed on 10.10.07. The impugned order was passed on 22.8.2007. The review petition is thus filed after 47 days. A substantial question of law is involved in this submission made by the learned counsel for the respondents 1& 2. However, since we have to dismiss the review petition on other grounds, we leave the question of limitation to be addressed in an appropriate case which may arise hereafter.

12. In view of the above we dismiss the review petition.

Pronounced in open court on this 31st *day of January,*
2008.

(Ms. Justice Manju Goel)
Judicial Member

(H.L. Bajaj)
Technical Member

