IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

REVIEW PETITION NO. 4 OF 2019

Dated: 20.08.2024

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

MAITHAN ALLOYS LIMITED
Ideal Centre, 4th Floor,
9, Acharya J.C. Bose Road,
Kolkata - 700017 … Petitioner

Versus

1. **CENTRAL ELECTRICITY REGULATORY COMMISSION**
Through its Secretary
3rd & 4th Floor, Chanderlok
Building 36, Janpath,
New Delhi – 110 001

2. **DAMODAR VALLEY CORPORATION**
Through its Chief Managing Director
DVC Towers, VIP Road,
Kolkata – 700054

3. **WEST BENGAL STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED**
Through its Chairman
Vidyut Bhawan, Bidhan Nagar,
Kolkata – 700 091

4. JHARKHAND STATE ELECTRICITY BOARD
Through its Managing Director
Engineering Building,
HEC Dhrwa, Ranchi – 834 004
Jharkhand … Respondents

Counsel for the Petitioner(s)	:	Rajiv Yadav
Counsel for the Respondent(s)	:	M.G. Ramachandran Sr. Adv. Ranjitha Ramachandran Anushree Bardhan Shubham Arya Arvind Kumar Dubey for Res. 2

O R D E R

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. By way of this review petition, the petitioner Maithan Alloys Limited is seeking review of the order dated 17.05.2019 passed by this Tribunal in the petitioner's appeal No.17 of 2014 along with other connected appeals which had arisen out of tariff order dated 07.08.2013 passed by Central Electricity Regulatory Commission (CERC) in respect of Damodar Valley Corporation's (DVC) Durgapur TPS unit for the period 01.04.2009 to 31.03.2014. Vide said judgment dated 17.05.2019, all these appeals were dismissed by this Tribunal.

2. According to the petitioner, the finding returned by this Tribunal in the said judgment dated 17.05.2019 that allowing both (i) contribution to

sinking fund and (ii) depreciation on the capital asset created by utilising the bond amount, as passthrough to the DVC does not tantamount double allowance, is patently erroneous and cannot be sustained.

3. We have heard learned counsel for the petitioner and learned senior counsel appearing for 2nd respondent DVC. We have also gone through the judgment dated 17.05.2019 of this Tribunal, the pleadings of the parties and the written submissions filed by the learned counsels.

4. Before adverting to and dealing with the rival submissions made by the learned counsel, we deem it appropriate to reproduce hereunder the relevant portion of the judgment dated 17.05.2019 of this Tribunal, which is sought to be reviewed:-

"

Our findings: -

8.5 We have carefully considered the submissions of learned counsel for the Appellants and learned counsel for Respondent Nos.1 & 2 and also took note of the various judgments relied upon by the parties. While the main contentions of the learned counsel for the Appellants are against the allowance of contribution to sinking fund to DVC and its utilisation,

on the other hand, leaned counsel for the Respondents contend that the Central Commission is allowing the same as per settled position of law and its relevant regulations relating to the subject. Learned counsel for the Appellants contended that this Tribunal did not lay down that DVC could be allowed with both interest on loan as well as contribution to sinking fund which tantamount to a particular cost component being allowed twice to a generating company.

8.6 It is relevant to note that as per Section 40 of DVC Act, 1948, DVC is entitled for provision for depreciation, reserve and other fund. This Tribunal in its judgment dated 23.11.2007 in Appeal No.271 of 2006 & batch has held the admissibility of sinking fund in favour of DVC which has also been upheld by the Hon'ble Supreme Court in its judgment dated 23.7.2018 reported as 2018 (8) SCC 281. Regarding the contention of alleged double counting of learned counsel for the Appellant, we find no such duplication

in the considerations and findings of the Central Commission.

8.7 Further, from the Tariff Regulation of the Central Commission, it is noticed that interest on loan and interest on working capital are distinct elements of the tariff and at no point of time, the repayment of loan capital is considered as a tariff element to be serviced in the tariff. The redemption of bonds from contribution to sinking fund is a special tariff element provided for DVC under Section 40 of the DVC Act, 1948 in addition to tariff elements provided in the Tariff Regulations. This aspect has already been upheld by the Apex court vide its judgment dated 23.7.2018 (stated supra). It is also noted from the tariff regulations that depreciation and interest on loan payable are two different aspects while sinking fund contribution is an additional tariff element admissible only to DVC under the DVC Act. We, therefore, find no force in the contentions of the learned counsel for the Appellants that by allowing depreciation, interests on

loan and sinking fund altogether, results into double counting and in turn yields into undue burden on consumers.

8.8 In view of above facts, we hold that the Central Commission has passed the impugned order in accordance with settled position of law and its Regulations. Thus, the instant case does not give in any manner rise to substantial question of law requiring our intervention / interference."

5. Learned counsel for the petitioner argued that Section 40 of the Damodar Valley Corporation Act, 1948 (hereinafter referred to as the "DVC Act") nowhere provides or suggests that the provisions / reserves / funds created under the said legal provision have to be allowed as an additional tariff element or even as a tariff element. According to the learned counsel, this section of the Act does not deal with electricity tariff at all and even otherwise also, making of provisions / reserves / funds as envisaged under it do not entail any additional expenditure but is only an allocation of existing fund for specific purpose. He submitted that Section 40 has a limited scope and only lays down the manner in which the profit of DVC

shall be calculated for the sole purpose of its distribution to the participating governments in terms of Section 37 of the Act. He argued that finding of this Tribunal that sinking fund contribution is an "additional tariff element" allowed to DVC by virtue of Section 40 of the DVC Act as well as the previous judgment of this Tribunal dated 23.11.2007 upheld by the Hon'ble Supreme Court in judgment dated 23.07.2018 reported as 2018 (8) SCC 261, is patently erroneous for the reason that neither this Tribunal nor the Supreme Court has dealt with "double allowance" in these judgments. It is further submitted by the learned counsel that since the judgment under review is clearly at variance with the very language of the relevant provisions of DVC Act as well as the Electricity Act, 2003, it certainly suffers from error apparent on the face of record and deserves to be rectified. On this aspect he cited the judgment of the Hon'ble Supreme Court in Union of India v. Namit Sharma (2013) 10 SCC 359.

6. Per contra, learned senior counsel appearing for the DVC (2nd respondent) would argue that the petitioner is misinterpreting the concept of depreciation and the interest on loan repayment, which are two different aspects. He would point out that the depreciation is admissible under the tariff regulations of the Central Commission independent of the interest on loan element and the sinking fund contribution is an additional tariff

element admissible to DVC under the DVC Act, 1948. He submitted that the depreciation, as a tariff element, is admissible irrespective of whether any loan is taken from the bank or a financial institution or any debt is used for funding the capital asset, and therefore, is distinct from sinking fund.

7. Learned senior counsel further submitted that under various tariff regulations notified by the Central Commission from time to time and applicable to all generating stations which are regulated by it under Section 79(1)(a) and (b) of the Electricity Act, 2003, and the inter-state transmission licenses in terms of Section 79(1)(c) and (d) of the Act, tariff elements permissible include interest on loan, rate of interest, depreciation, O&M expenses, interest on working capital, tax on income, variable charges etc. He further submitted that in addition to these tariff elements, the DVC is entitled to certain specific tariff elements namely interest on capital contributed by participating governments in terms of Section 38 of the DVC Act, expenditure incurred on statutory activities such as afforestation, socio-economic activities etc. under Section 36 of the DVC Act and contribution to the sinking fund / other funds as per Section 40 of the DVC Act. He referred to judgment dated 23.11.2007 of this Tribunal in appeal No.271 of 2006 & batch which has been upheld by the Hon'ble Supreme Court in the judgment dated 23.07.2018 reported as 2018 (8)

SCC 281 to submit that this Tribunal as well as the Supreme Court have recognized the need to allow such further tariff elements to the DVC.

8. According to learned senior counsel, the submission of the petitioner relating to double accounting is based on the assumption that sinking fund has been used for payment of interest on loan or interest on working capital borrowed from banks or financial institutions. He submitted that the amount lying in the sinking fund is being utilised for repayment of the bonds that have been or may be raised by DVC from time to time to fund its assets. He argued that the review petition is totally misconceived and malafide and prayed for its dismissal.

Our Analysis: -

9. At the outset, we may note that Section 114 of CPC is the substantive provision dealing with scope of review and is quoted below:

> *"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."

10. The grounds on which review of a judgment / order can be sought, have been specified in order XLVII of the CPC which are reproduced hereinbelow: -

"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, <u>from the discovery of new and important matter or evidence which, after the exercise of due</u>

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 applied for the review.

Explanation.—The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of

a superior Court in any other case, shall not be a ground for the review of such judgment."

(Emphasis supplied)

11. A bare reading of these relevant legal provisions would make it clear that an application for a review of a judgment / order is maintainable upon (i) discovery of a new and important matter or evidence which, after exercise of due diligence, was not within the knowledge of the review applicant or could not be produced by him when the judgment / order was passed and (ii) on account of some mistake or error apparent on the face of record or (iii) for any other sufficient reason.

12. The expression "error apparent on the face of record" used in Order XLVII Rule 1 indicates an error which is self-evident and staring in the eye. Any error or mistake which is not self-evident and has to be deducted from a process of reasoning cannot be said to be an error apparent on the face of record justifying exercise of power of review. Power of review can be exercised only where a glaring omission or a patent mistake is found in the order under review. We may also note that the power of review can be exercised only for correction of a parent mistake but not to substitute a

view for the reason that a review petition cannot be permitted to be an appeal in disguise.

13. *In Chhajju Ram v. Neki Ram* AIR 1922 PC 112, it was held that the words "any other sufficient reason" appearing in Order XLVII Rule 1 CPC must mean "a reason sufficient on grounds at least analogous to those specified in the rule". This interpretation was approved by the Supreme Court in later judgment in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasium* 1955 1 SCR 520. In *Kamlesh Verma v. Mayawati & Ors.* (2013) 8 SCC 320, Hon'ble Supreme Court has succinctly summarized the principles for exercising review jurisdiction as under:-

> *"20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the stature:*
>
> *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 and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius 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.

20.2 When the review will not be maintainable:

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

(ii) Minor mistakes of inconsequential import.

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

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

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

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

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

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

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

14. We also find advantageous to quote here following Paragraphs of the judgment of the Hon'ble Supreme Court in *S. Madhusudhan Reddy v. V. Narayana Reddy & Ors*. (2022) SCC OnLine SC 1034:-

"31. As can be seen from the above exposition of law, it has been consistently held by this Court in several

judicial pronouncements that the Court's jurisdiction of review, is not the same as that of an appeal. A judgment can be open to review if there is a mistake or an error apparent on the face of the record, but an error that has to be detected by a process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise its powers of review under Order XLVII Rule 1 CPC. In the guise of exercising powers of review, the Court can correct a mistake but not substitute the view taken earlier merely because there is a possibility of taking two views in a matter. A judgment may also be open to review when any new or important matter of evidence has emerged after passing of the judgment, subject to the condition that such evidence was not within the knowledge of the party seeking review or could not be produced by it when the order was made despite undertaking an exercise of due diligence. There is a clear distinction between an erroneous decision as against an error apparent on the face of the record. An erroneous decision can be

corrected by the Superior Court, however an error apparent on the face of the record can only be corrected by exercising review jurisdiction. Yet another circumstance referred to in Order XLVII Rule 1 for reviewing a judgment has been described as "for any other sufficient reason". The said phrase has been explained to mean "a reason sufficient on grounds, at least analogous to those specified in the rule" (Refer: Chajju Ram v. Neki Ram and Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius)."

15. In the case at hand, we may note that the 2nd respondent DVC is a statutory body specially constituted under the DVC Act, 1948 which is a Central Act. It is a special legislation dealing with the development of the Damodar Valley, which partly falls in the State of West Bengal and partly in the State of Jharkhand. The Corporation was constituted on the basis of the model of Tennessee Valley Authority in USA to control the flood and to undertake development of Damodar Valley in composite manner involving multifarious activities including generation, transmission and distribution of

electricity. The corporation does not distribute profit to the participating governments and utilizes all its income for improvement of Damodar Valley area.

16. The corporation was not under the purview of the electricity laws till 10.06.2003. It was governed by the DVC Act in the matters relating to electricity tariff also. Section 20 of the Act vested in the corporation, the power to determine the tariff to be charged for electricity related activities.

17. The entire capital investment by the Corporation in the power project has been out of the capital contributed by the participating governments. Section 38 of the DVC Act provides for payment of interest on the capital contribution by participating governments and Section 40 authorises Corporation to make provision for depreciation, reserves, and other funds at such rates and such terms as may be specified by the Auditor General of India in consultation with the Central Government.

18. Here, we find it pertinent to quote Sections 38, 39 and 40 of the DVC Act, 1948:-

> *"38.* ***Payment of interest*** *: The Corporation shall pay interest on the amount of capital provided by each participating Government at such rate as may, from time*

to time, be fixed by the Central Government and such interest shall be deemed to be part of the expenditure of the Corporation.

39. ***Interest charges and other expenses to be added to and receipts taken for reduction of capital cost*** *: For a period, not exceeding fifteen years, from the establishment of the Corporation, if the Corporation runs in deficit, the interest charges and all other expenditure shall be added to the capital cost and all receipts shall be taken in reduction of such capital cost.*

40. ***Provision for depreciation and reserve and other funds*** *:*

1) The Corporation shall make provision for depreciation and for reserve and other funds at such rates and on such terms as may be specified by the Auditor General of India in consultation with the Central Government.

2) The net profit for the purposes of section 37 shall be determined after such provision has been made."

19. The Electricity Act, 2003, was notified on 10.06.2003. Its Section 14 coupled with fourth proviso is relevant for the purposes of this petition and is reproduced hereunder: -

> ***"Section 14. (Grant of licence):***
>
> *The Appropriate Commission may, on an application made to it under section 15, grant a licence to any person –*
>
> *(a) to transmit electricity as a transmission licensee; or*
>
> *(b) to distribute electricity as a distribution licensee; or*
>
> *(c) to undertake trading in electricity as an electricity trader,*
>
> *in any area as may be specified in the licence:*
>
> *…*
> *…*
> *…*
>
> *Provided also that the Damodar Valley Corporation, established under sub-section (1) of section 3 of the Damodar Valley Corporation Act, 1948, shall be deemed to be a licensee under this Act but shall not be required to obtain a licence under this Act and the provisions of*

the Damodar Valley Corporation Act, 1948, in so far as they are not inconsistent with the provisions of this Act, shall continue to apply to that Corporation:

…"

20. Thus, in terms of the above quoted fourth proviso to Section 14 of the Electricity Act, 2003, if there is a provision in DVC Act, which is inconsistent with the provisions of Electricity Act, 2003, the provisions of DVC Act would, to the extent of any inconsistency, cease to apply. Since, Section 20 of the DVC Act which empowers the Corporation to fix charges for the electricity supplied by it to bulk as well as retail consumers is inconsistent with Sections 79 and 86 read with Sections 61, 62 and 64 of the Electricity Act, 2003, which vest in the Central Commission or the State Commissions the power to determine electricity tariff, Section 20 of the DVC Act ceased to operate with effect from 10.06.2003, and therefore, the Corporation has been left with no power to determine tariff for its power projects.

21. Here, we may note that the DVC raises funds by issuing bonds in open market from time to time for undertaking capital expenditure. Such bonds carry coupon rate of interest which is paid periodically to the bond

subscribers. The “principal amount” raised from bond subscribers is repaid at the time of redemption. In order to have sufficient corpus at the time of redemption of bonds, DVC transfers / contributes a certain amount annually to a fund known as “sinking fund for redemption of bonds”. Undisputedly, such contribution is allowed as passthrough in tariff. This is in terms of and as per the spirit of Section 40 of DVC Act.

22. As per the judgment of this Tribunal dated 17.05.2019, which is under review in this petition, following elements are pass through in tariff: -

(a) Contribution to sinking fund for payment of bond amount to subscribers at the time of redemption.

(b) Depreciation on capital assets created by utilising the bond amount.

23. According to the petitioner, since the payment of debt raised from issuance of bond is already being ensured through “(a)” hereinabove i.e. contribution to sinking fund, allowing depreciation on capital assets created by utilising bond amount clearly makes out a case of “duplication” or “double allowance” which cannot be permitted and this Tribunal has fallen into a patent error in not recognizing the same. It is the case of the petitioner that the DVC can be allowed either (a) or (b) and not both.

24. We may note here that sinking fund has been established by the DVC with the approval of Comptroller and Accountant General of India vide letter dated 29.12.1992 under the provisions of Section 40 of the DVC Act and as per sub-section 2 of Section 40 of DVC Act, the contribution towards sinking fund is to be taken as an item of expenditure to be recovered through tariff. This legal position has been enunciated by this Tribunal in the judgment dated 23.11.2007 in DVC v. CERC (appeal No.271/2007 and batch). Pertinently, the said judgment of this Tribunal has been upheld by the Hon'ble Supreme Court in Bhaskar Shrachi Alloys Ltd. V. Damodar Valley Corporation (2018) 8 SCC 281. As noted hereinabove, this Tribunal has relied upon these two judgments in arriving at the impugned findings in the judgment under review dated 17.05.2019.

25. We do not find ourselves in quarrel with the proposition that the "depreciation" and the "sinking fund" are two different concepts and sinking fund contribution is an additional tariff element permissible to DVC under Section 40 of DVC Act, 1948. However, in our considered opinion distinction also needs to be created between the depreciable asset created by use of the bond fund and the depreciable asset created by use of funds from other sources.

26. Since the bonds issued by the Corporation from time to time are redeemed from the sinking fund which is created under Section 40 of the DVC Act from the tariff realised from the consumers, the capital asset created through such bond amount does not qualify for depreciation as a passthrough tariff element. To support our view in this regard, we may refer to Regulation 9(6) of CERC tariff Regulations, 2014 which is quoted hereinbelow:-

> *"Provided that any grant received from the Central or State Government or any statutory body or authority for the execution of the project* ***which does not carry any liability of repayment shall be excluded from the Capital Cost for the purpose of*** *computation of interest on loan, return on equity and* ***depreciation****."*
>
> *(emphasis supplied)*

27. Similarly, Regulation 19 of CERC Tariff Regulations, 2019, provides as under:-

> ***"19. Capital Cost:***
> *(1) – (4) ……*
> *(5) The following shall be excluded from the capital cost of the existing and new projects:*

(a) to (d) *……*

(e) ***Any grant received*** *from the Central or State Government or any statutory body or authority for the execution of the project* ***which does not carry any liability of repayment."***

28. These two regulations exclude the capital assets funded through government grants from calculation of capital asset for the purpose of computation of interest on loan, rerun on equity and depreciation. The rationale for such exclusion is not far to seek. A generator does not have to repay the government grant and therefore, assets created through such nonrepayable grant have been rightly excluded from computation of depreciation of assets. The same rationale must apply in case of the capital assets created by use of funds raised through sale of bonds. These bonds are redeemed from the sinking fund which is created from the part of tariff charged to the consumers. Therefore, allowing depreciation on such capital assets created by utilising of bond amount would be a double burden upon the consumers which cannot be permitted.

29. This Tribunal, while passing the judgment under review, has completely ignored the above noted aspect of the case and has therefore,

committed a patent error which needs to be rectified in these review proceedings.

30. Further, this Tribunal has also erred patently in basing the findings in the judgment under review upon above noted judgment dated 23.11.2007 of this Tribunal in DVC v. CERC and Ors. (Appeal No.271/2007 & batch), as well as the judgment of the Hon'ble Supreme Court in Bhaskar Shrachi Alloys Ltd. V. Damodar Valley Corporation (2018) 8 SCC 281.

31. We have gone through both these judgments minutely. The concept of "duplication" or "double allowance" was not brought before this Tribunal or the Hon'ble Supreme Court, and therefore, the same has not been discussed at all either by this Tribunal or by the Hon'ble Supreme Court. It is only the rate of depreciation permissible to DVC which was in dispute in those appeals. This is evident from the following relevant Paragraphs of the judgment dated 23.11.2007 of this Tribunal: -

> "
>
> ***E.15*** *As regards sinking funds which is established with the approval of Comptroller and Accountant General of India vide letter dated December 29, 1992 under the provision of Section 40 of the DVC Act is to be taken as*

an item of expenditure to be recovered through tariff, as brought out in para 82 earlier.

F. Depreciation Rate

F.1 *Section 40 of DVC Act provides for the Comptroller and Auditor General of India (C&AG) to prescribe depreciation, reserve and other funds in consultation with the Central Government. The aforesaid provision neither quantifies nor limit the rate of depreciation to be allowed.*

F2. *The Appellant has claimed depreciation at rate prescribed by the C&AG and submits that all along till the Electricity Act, 2003 came into effect, it has been factoring the prescribed depreciation rate in formulating the tariff. It is relevant to point out that the Act does not make any provision for factoring rate of depreciation in tariff determination. Thus, in our opinion, the DVC Act insofar as the depreciation is concerned is not inconsistent with the Act and shall continue to apply to the corporation.*

F3. *The depreciation, in respect of useful life of a substantial portion of generation capacity of DVC being aged out and redeemed, leaves little or no impact on the tariff of such plants. However, the impact of depreciation rate on the tariff of the balance generation capacity shall be significant as the rate of depreciation prescribed by the C&AG is higher than what is fixed by the Regulations, 2004. For the aforesaid reason, it is essential for the Central Commission to carryout reasonable assessment of the capital cost of each power plant individually at COD (if the authentication of approved cost is not available/traceable) and apply the prescribed rate of depreciation for each successive year since then to arrive at adjusted fixed cost for each plant for consideration in tariff determination. The depreciation is to be allowed and computed only on aggregate sum of gross capital asset of each plant qualifying for the depreciation and not regardless of it.*

F4. *We, therefore, direct the Central Commission to adopt rate of depreciation as prescribed by C&AG for*

computation of tariff for the asset based on the principle outlined above while keeping in view our remarks in respect of Dept-Equity ratio in para 112(A) above."

32. The relevant observations of the Hon'ble Supreme Court in Bhaskar Shrachi case are reproduced hereunder:-

"56. The specific heads of tariff fixation on which grievances have been raised by the appellants in the present set of appeals are enumerated as hereunder:

(a) Depreciation rate;

(b) Sinking fund;

(c) Debt-equity ratio;

(d) Pension & gratuity contribution;

(e) Return on capital investment on head office, etc.;

(f) Revenue relating to afforestation, etc., which are not relatable to power generation;

(g) Period of transition (two years) allowed for the tariff fixed by CERC to come into effect;

(h) The treatment of entire transmission as inter-State transmission lines thereby divesting the Jharkhand and West Bengal State Electricity Regulation Commissions of the power to fix tariff insofar as intra-State transmission of electricity is concerned.

57. Insofar as the questions under the last two issues at (g) and (h) above are concerned, the same have already been dealt with in the present order. Of the remaining heads of tariff fixation, it appears that so far as the "depreciation rate" and "sinking fund" is concerned it is the provisions of Section 40 of the 1948 Act which have been held to be determinative. We have gone through the reasoning adopted by the learned Appellate Tribunal in this regard. Having clarified the manner in which the fourth proviso to Section 14 of the 2003 Act has to be understood, we do not find the reasoning adopted by the learned Appellate Tribunal on the issues relating to "depreciation" and "sinking fund" to be fundamentally flawed in any manner so as to give rise to a substantial question of law requiring our

intervention/interference under Section 125 of the 2003 Act."

33. Therefore, while it cannot be gainsaid that redemption of bonds from contribution to sinking fund is a special tariff element provided to DVC under Section 40 of DVC Act, 1948 in addition to the tariff elements provided in the tariff regulations issued by Central Commission from time to time, there is nothing in the above noted judgments of this Tribunal and of the Hon'ble Supreme Court that depreciation shall be allowed on the capital assets created by utilising the bond amounts.

34. In view thereof, it is manifest that this Tribunal has committed a patent error, which stares in the eye, by misinterpreting the provisions of Section 40 of DVC Act, 1948 and holding that allowing depreciation on the capital assets created by utilizing the bond amount do not make out a case of "double allowance". To sustain such an erroneous interpretation of statutory provisions would neither be in the interest of justice nor in the interest of the consumers. Since, the judgment under review is manifestly at variance with the language and spirit of the relevant provisions of DVC Act as well as the Electricity Act, 2003, as discussed hereinabove, there is no escape from the conclusion that it suffers from error apparent on the

face of record as envisaged under Order XLVII Rule 1 CPC and deserves to be rectified. We find sufficient reasons to review / rectify the judgment dated 17.05.2019 of this Tribunal in appeal No.17 of 2014.

35. Accordingly, the petition is allowed. We hold that allowing depreciation on the capital assets created by utilizing bond amount makes out a case of "duplication" or "double allowance" which would be a double burden for the consumers and thus, not permissible. The 2nd respondent DVC can claim only one of the two elements namely (a) contribution to sinking fund for payment of bond amount to subscribers at the time of redemption or (b) depreciation of capital assets created by utilizing the bond amount, as passthrough in tariff.

Pronounced in the open court on this the 20th day of August, 2024.

(Virender Bhat)	(Sandesh Kumar Sharma)
Judicial Member	Technical Member (Electricity)

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