IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI

(APPELLATE JURISDICTION)

REVIEW PETITION NO. 9 & IA NO. 1422 OF 2018
IN
APPEAL NO. 268 OF 2015

Dated: 2nd January, 2019

Present: HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER
HON'BLE MR. S.D. DUBEY, TECHNICAL MEMBER

IN THE MATTER OF:

Surat Municipal Corporation
Through I/C Executive Engineer
Main Office Building,
Muglisara,
Surat-395 003 **...REVIEW PETITIONER/APPELLANT**

VERSUS

1. Gujarat Electricity Regulatory Commission
Through its Secretary
6th Floor, GIFT ONE,
Road 5C, Zone-5, GIFT City,
Gandhinagar-382355
Gujarat, India

2. Torrent Power Ltd.
Through Vice President, Corporate Affairs
Samanvay, 600 Tapovan,
Ambawadi,
Ahmadabad-380 015 **... RESPONDENTS**

Counsel for the Review Petitioner/ Appellant(s)	:	Mr. Anand K. Ganesan Ms. Swanpa Seshadri Ms. Pyoli
Counsel for the Respondent(s)	:	Ms. Suparna Srivastava Ms. Sanjana Dua Ms. Nehul Sharma for R-1 Ms. Deepa Dhawan Mr. Hardik Luthra Mr. Alok Shukla Mr. Chetan Bondila Mr. Ravindra Chile for R-2

J U D G M E N T

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

1. The present Review Petition has been preferred by the Review Petitioner/Appellant Surat Municipal Corporation under Section 120(2)(f) of the Electricity Act, 2003 for review of the Judgment of this Tribunal dated 03.05.2018 in Appeal Nos. 268 of 2015.

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

   (A) Review the Order dated 03.05.2018 passed by this Hon'ble Tribunal in Appeal No. 268 of 2015.

   (B) Pass such other Order(s) as this Hon'ble Tribunal may deem just and proper in the interest of justice.

3. The Review Petitioner/Appellant Surat Municipal Corporation had filed its main Appeal No. 268 of 2015 under Section 111 (1) read with Section

111 (6) of the Act against the order dated 29.05.2015 passed by Gujarat Electricity Regulatory Commission (GERT/State 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 03.05.2018. The learned counsel Mr. Anand K. Ganesan at the outset submitted that the Review Petitioner/Appellant is mainly an aggrieved on the following two points only, the same read as follow:-

> *"(i) In avoiding consideration of various submissions which were made by Counsel of the Appellant which are supported by various decisions of this Hon'ble Tribunal as well as of the Supreme Court of India while mentioning them in the impugned order at Sr. Nos. 6.1 to 6.15 in part. Such avoidance in the appealable order is contrary to the ratio of the Apex Court decision reported in 2013 (13) SCC 419 (Para 19 may be seen therein). The said decision had become law of the land under Article 141 of the Constitution of India. These submissions were placed on record on behalf of the Appellant on 18.01.2018.*
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> *(iii) In allowing the Appellant SMC in para 10.17 to approach the State Commission to re-determine the project specific tariff which is not permissible in law because such direction is violation of Regulation 7 (a) (ii) and 7 (b) read with proviso to Regulation 8 (2) of the CERC (Terms and Conditions for Tariff determination Regulation, 2012, apart from the fact that it is against the ratio of decision of other coordinate bench of equal strength of this Tribunal in Appeal No. 75 of 2012."*

4. The learned counsel for the Review Petitioner/Appellant has contended that, while framing issues, this Tribunal has avoided consideration of various submissions which were submitted by the learned counsel of the Review Petitioner/Appellant duly supporting with various decisions of this Tribunal as well as of the Apex Court while mentioning them in the

impugned order in part. It has further been mentioned that such avoidance in the appealable order is contrary to the ratio of the Apex Court decision reported in 2012(13) SCC 419 (Para 19).

5. In this regard, we opine that the main grievance of the Review Petitioner/Appellant against the order impugned of the State Commission was primarily on two accounts, first being grant of lower tariff than the generic tariff and secondly, consideration of Central Financial Assistance (CFA) in computation of admissible tariff.

6. It is significant to note that, the entire grounds, pleadings, arguments etc. were made by the Review Petitioner/Appellant only to contest on the above two points 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 03.05.2018. Neither any additional nor fresh ground has been made by the review petitioner now which otherwise, strengthen its pleadings in support of its intended review of the judgment.

7. The other grievance of the Review Petitioner/Appellant is to approach the State Commission to re-determine the project specific tariff. In this regard our finding in the reference judgment are reproduced as under:-

> *"10.7 We have evaluated the facts and submissions of the rival parties as available with us and find that after commissioning its solar project on 27.03.2014, the Appellant began supplying electricity to the Respondent and was quick to persuade TPL to enter into PPA on an urgent basis. Before executing the PPA, Respondent and the Appellant deliberated the issue related to the capital subsidy granted by Government of India (by MNRE) and its impact on tariff to the distribution licensee and in turn, to consumers. Both the parties agreed for signing the PPA and also*

referring the matter of tariff determination to the State Commission with a specific reference to the factoring of CFA provided by MNRE to the Appellant. In view of these facts, we do not find any ambiguity or infirmity in signing of the PPA between the two parties and also, approaching the State Commission for tariff determination in consideration of grant of capital subsidy to the project from MNRE."

8. However it would thus appear that the points on which the Review Petitioner/Appellant has preferred the instant Review petition is prime facie to reopen the whole matter contained in the original Appeal afresh and make out entirely new case thereon. In our consideration fresh adjudication by this Tribunal which is not permissible under the law through a review petition.

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

"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;

10. 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.

11. Through a number of judicial decisions, 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 03.05.2018 in Appeal No. 268 of 2015 which according to the review petitioner requires exercise of review jurisdiction by this Tribunal.

12. In fact, the review petitioner in the guise of the present proceedings has virtually sought a rehearing of the 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.*

13. In the present 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 "*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

14. The Hon'ble Supreme Court in catena of its decisions has laid down the scope and ambit of review as under:-

> *"**M/s Goel Ganga Developers India Pvt. Ltd. Versus Union of India through Secretary Ministry of Environment and Forests and Ors.***
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> *36. In this behalf, we must remind ourselves that the power of review is a power to be sparingly used. As pithily put by Justice V.R. Krishna Iyer, J., "A plea for review, unless the first judicial view is manifestly distorted, is like asking for the moon"2. The power of review is not like appellate power. It is to be exercised only when there is an error apparent on the face of the record. Therefore, judicial discipline requires that a review application should be heard by the same Bench. Otherwise, it will become an intra court appeal to another Bench before the same court or tribunal. This would totally undermine judicial discipline and judicial consistency.*
>
> ***Emphasis supplied***
>
> ***Haridas Das Vs. Usha Rani Banik (Smt.) & Ors. – 2006 (4) SCC 78***
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> *"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.

16. In Aribam Tuleshwar Sharma v. Aribam Pishak Sharma (AIR 1979 SC 1047) this Court held that there are definite limits to the exercise of power of review. In that case, an application under Order XLVII, Rule 1 read with Section 151 of the Code was filed which was allowed and the order passed by the judicial Commissioner was set aside and the writ petition was dismissed. On an appeal to this Court it was held as under:

"It is true as observed by this Court in Shivdeo Singh v. State of Punjab (AIR 1963 SC1908) there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inherest in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter of evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made, it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court."

17. The judgment in Aribam's case (supra) has been followed in the case of Smt. Meera Bhanja (supra). In that case, it has been reiterated that an error apparent on the face of the record for acquiring jurisdiction to review must be such an error which may strike one on a mere looking at the record and would not require any long drawn process of reasoning. The following observations in connection with an error apparent on the face of the record in

the case of Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tiruymale [AIR 1960 SC 137] were also noted:

"An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior Court to issue such a writ."

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 :

"9. 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

Haryana State Industrial Development Corporation Limited Vs. Mawasi & Ors. – 2012 (7) SCC 2000

35. In State of West Bengal v. Kamal Sengupta (2008) 8 SCC 612, the Court considered the question whether a Tribunal

established under the Administrative Tribunals Act, 1985 can review its decision, referred to Section 22(3) of that Act, some of the judicial precedents and observed:

"21. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review ex debito justitiae.

Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier.

22. The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment / decision."

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. Sajjan Singh v. State of Rajasthan.(1) For instance, if the attention of the Court is not drawn to a material statutory provision during the original hearing, the Court will review its judgment. G. L. Gupta v. D. N. Mehta.(2) The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice. O. N. Mahindroo v. Distt. Judge Delhi & Anr.(2) Power to review its judgments has been conferred on the Supreme Court by Art. 137 of the Constitution, and that power is subject to the provisions of any law made by Parliament or the rules made under Art. 145.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." Chandra Kanta v. Sheikh Habib.

Emphasis supplied

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

15.....

56. 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.'

18. Review is not re-hearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to

re-open concluded adjudications. This Court, in Jain Studios Ltd. v. Shin Satellite Public Co. Ltd., [JT 2006 (7) SC 40 : (2006) 5 SCC 501], held as under:

11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.

12. When a prayer to appoint an arbitrator by the applicant herein had been made at the time when the arbitration petition was heard and was rejected, the same relief cannot be sought by an indirect method by filing a review petition. Such petition, in my opinion, is in the nature of 'second innings' which is impermissible and unwarranted and cannot be granted.

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

15. In view of the above well settled law laid down by the Apex Court, it is manifest that the following grounds of review are maintainable as stipulated by the statute:

(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 Poulose 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.

Emphasis supplied

16. 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.

17. In view of the above, it is relevant to note 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.

18. Therefore, we are of the considered view, the Review Petition No. 9 of 2018 is dismissed as devoid of merits.

19. Needless to say, the pending IAs, if any, shall stand disposed of.

20. Pronounced in the open court on this **2nd** day of **January, 2019.**

(S.D. Dubey)
Technical Member

(Justice N.K. Patil)
Judicial Member

REPORTABLE / ~~NON-REPORTABLE~~