

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

REVIEW PETITION NO.1 OF 2024

Dated: 14.08.2024

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

In the matter of:

MANGALAM CEMENT LTD.

P.O. ADITYA NAGAR-326520,
MORAK, DIST. KOTA (RAJ.)
THROUGH ITS SHRI VINAY KUMAR JAIN,
SR. GENERAL MANAGER
(STORES & COMMERCIAL)
AUTHORISED SIGNATORY.
Email: email@mangalamcement.com

..... PETITIONER

VERSUS

1. **JAIPUR VIDYUT VITRAN NIGAM LIMITED**
VIDYUT BHAWAN, JANPATH JAIPUR-302005
THROUGH ITS MANAGING DIRECTOR
Email: cmd@jvvn.in.

2. **RAJASTHAN ELECTRICITY REGULATORY COMMISSION**
“VIDYUT VINYAMAK BHAWAN”,
NEAR STATE MOTOR GARAGE,
SAHAKAR MARG, JAIPUR-302 005
THROUGH ITS SECRETARY
Email: recjpr@yahoo.co.in.

Counsel on record for the Petitioner(s) : P.N. Bhandari
Paramhans Sahani

Counsel on record for the Respondent(s) : Sandeep Pathak
Aadhar Saha
Avnish Dave for Res1

ORDER

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The petitioner, Mangalam Cement Ltd. has, by way of this petition, has sought review of order dated 18.12.2023 passed by this Tribunal in Appeal No.230 of 2018 filed by the petitioner against the order dated 26.09.2017 passed by Respondent No. 2, Rajasthan Electricity Regulatory Commission (hereinafter referred to as "the Commission").

2. Vide above noted judgment dated 18.12.2023, this Tribunal did not find any error or infirmity in the impugned order dated 26.09.2017 of the Commission and accordingly dismissed the appeal.

3. Learned counsel for the petitioner argued that the judgment dated 18.12.2023 of this Tribunal suffers from an error apparent on the face of record, and therefore, the same deserves to be reviewed, and, as a consequence, the appeal of the petitioner needs to be allowed. According to the learned counsel, the said judgment dated 18.12.2023 of this Tribunal suffers from following patent errors: -

- (i) *None had turned up on behalf of the respondents to argue the appeal and it has been wrongly mentioned in Paragraph 11 of the said judgment that learned counsels for the parties have been heard.*
- (ii) *The appellant had filed additional written submissions also about which there is no mention in the said judgment.*
- (iii) *The observation of this Tribunal that nowhere is it provided that the regulations of 2014 are not applicable to previously executed PPAs, is erroneous.*
- (iv) *This Tribunal, by interpreting the expression “amended from time to time” found in clause 5(B)(d) of the 2014 tariff regulations, cannot amend or enlarge the control period of the regulations from 5 years to 12 years.*
- (v) *Previous judgment of this Tribunal in the case of Fortune Five Hydel Projects Pvt. Ltd. v. Karnataka Electricity Regulatory Commission & Ors. (Appeal No.42/2018) decided on 29.03.2019 is applicable to the facts of the instant case and has been wrongly ignored while writing the judgment dated 18.12.2023.*

4. We have heard the learned counsel for the review petitioner at length and have perused the order dated 18.12.2023 passed in appeal No.230 of

2018. We have also perused the written submissions filed by the learned counsel.

5. 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.”

6. 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, from the discovery of new and important matter or evidence which, after the exercise of due 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)

7. A bare reading of these relevant legal provisions would make it clear that an application for 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; or (ii) on account of some mistake or error apparent on the face of record; or (iii) for any other sufficient reason.

8. 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 patent mistake but not to substitute a view for the reason that a review petition cannot be permitted to be an appeal in disguise.

9. 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 Poulouse 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 Poulouse 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.”

10. 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 Poulouse Athanasius*).

11. In the instant case, the ground No.(i) raised by the petitioner to seek review of the judgment dated 18.12.2023 only relates to an inadvertent

mistake which has occurred in the said judgment but does not affect the merits of the appeal. The fact remains that all the submissions made by petitioner's counsel during the hearing of the appeal have been taken note of and considered while passing the said judgment. In fact, the judgment is based on the record of the case and the arguments made by the petitioner's (appellant's) counsel. Therefore, the said error cannot be made basis for seeking review of this judgment.

12. The ground No.(ii) raised by the petitioner is totally misconceived. In Paragraph No.11 of the judgment dated 18.12.2023 we have noted that the written submissions filed by the learned counsels have been perused. The expression "written submissions" includes the "additional written submissions" also filed on behalf of the petitioner. Merely because we have not used the expression "additional written submissions" also in the said paragraph of the judgment does not mean that we have not considered the addition written submissions filed by the petitioner. The learned counsel has failed to bring to our notice any submission contained in the "additional written submissions" which we have not considered in the judgment dated 18.12.2023. Therefore, this ground is totally concocted and baseless.

13. So far as the ground No.(iii) is concerned, the submissions in this regard have been taken note of and considered in Paragraph No.23 of the

judgment dated 18.12.2023. Our observations and findings on this aspect may or may not be legally sound and correct. In case, these are found against the settled legal principles, these may be set aside in appeal by the Hon'ble Supreme Court. But it is certain that these do not provide the petitioner a ground for seeking review of the said judgment for the reason that these are findings on merit arrived upon consideration of the material on record as well as the settled legal position.

14. With regards to the interpretation of the expression “amended from time to time” found in clause 5(B)(d) of the 2014 regulations, there is elaborate discussion in Para 19 of the judgment dated 18.12.2023. Merely because we have not agreed to the interpretation of the said expression sought to be given by the learned counsel does not imply that the judgment dated 18.12.2023 suffers from any error apparent on the face of record. Our findings on this aspect can, at best, be assailed before the Hon'ble Supreme Court by way of the appeal as provided under the Electricity Act, 2003.

15. We have explained in Paragraph No.25 of the judgment dated 18.12.2023 as to why the previous judgment of this Tribunal in the case of *Fortune Five Hydel Projects* is not relevant to the facts of the case. In

case, we have fallen in error in doing so, the petitioner would be well advised to assail our observations in this regard by way of appeal in the Supreme Court but certainly these do not constitute an error apparent on the face of record entitling the petitioner to seek review of the said judgement.

16. It is manifest that in the garb of this review petition, the petitioner has assailed our findings on the merits of the appeal and wants us to reappraise the material on record afresh, which can not be permitted. This review petition is actually an appeal in disguise.

17. Hence, we are of the considered view that the judgment dated 18.12.2023 does not suffer from any error apparent on the face of record. There is a marked distinction between a judgment suffering from an error apparent on the face of record and an erroneous judgment. An erroneous judgment can only be assailed before the higher forum by way of appeal. Therefore, in case in the opinion of the petitioner, our judgment dated 18.12.2023 is erroneous, he may impugn the same by way of an appeal before the Hon'ble Supreme Court. We are unable to discern the wisdom of the petitioner in filing this review petition when no patent error could be pointed out in the judgment dated 18.12.2023.

18. In view thereof, the petition is found to be devoid of any merit and is hereby dismissed.

Pronounced in the open court on this the 14th day of August, 2024

tp

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)