IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

EXECUTION PETITION NO. 9 OF 2024 &
IA NO. 1515 OF 2024 & IA NO. 1609 OF 2024

Dated: 27th January, 2025

Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon'ble Ms. Seema Gupta, Technical Member (Electricity)

In the matter of:

M/s Aditya Industries (Partnership Firm)
Village Rampur Jattan,
Kala Amb, Distt Sirmour (H.P.)
PIN – 173030. … Petitioner(s)

VERSUS

1. **Himachal Pradesh State Electricity Board Limited**
Vidyut Bhawan, Kumar House,
Shimla – 171004. ... Respondent No.1

Counsel on record for the Petitioner	:	Ajay Vaidya
Counsel on record for the Respondent(s)	:	Anand K. Ganesan Swapna Seshadri Amal Nair Shivani Verma Kritika Khanna

ORDER

PER HON'BLE MR. JUSTICE RAMESH RANGANATHAN, CHAIRPERSON

IA-1515/2024
(For recalling of the order)
and
IA-1609/2024
(For Modification)

The application in I.A.No.1515 of 2024 is filed seeking the following prayers (a) Allow the IA and Recall the order whereby Execution Petition

No.04/2016 was disposed of; (b) alternatively the present execution, petition which is maintainable, be heard on merits; (c) pass any other order(s) or directions(s), which this Hon'ble Tribunal may deem fit and proper. Thereafter IA No. 1609 of 2024 was filed requesting this Tribunal to (a) allow the IA and order correction of the error in disposing of EP No. 4 of 2016; (b) alternatively, hear the present EP, which is maintainable, on its merits; and, (c) pass any other order or direction which this Tribunal deems fit and proper.

I. RELEVANT FACTS:

This case has had a chequered history. Appeal No. 73 of 2014 was filed by the Execution Petitioner herein before this Tribunal questioning the validity of the order passed by the Himachal Pradesh State Electricity Regulatory Commission in Petition No. 181 of 2012 dated 24.08.2013.

In its order, in Appeal No. 73 of 2014 dated 09.09.2015, this Tribunal framed the following issues (i) whether the State Commission lacks jurisdiction to adjudicate upon the dispute or make any directions to the Electricity Board?; (ii) whether the order dated 29.12.2012 passed by the Consumer Forum for Redressal of Grievances of the Electricity Board consumers in Case No. 1515/4/08/032 titled M/s Amba Metals, Kala Amb Vs. HPSEBL and Ors. is fully applicable to the case of the appellant/petitioner; and, (iii) whether the appellant was entitled to the benefit of the said order dated 29.12.2012?

Thereafter, in its order in Appeal No. 73 of 2014 dated 09.09.2015, this Tribunal held that it is only the State Commission which has jurisdiction to deal with the stipulations where non-compliances of the conditions, Rules and Regulations by the licensee are reported; Condition No.29 of the load sanction letter issued by the Electricity Board was illegally inserted, and the appellant was coerced and constrained to agree to that condition in spite of

the fact that there were no CEA metering and Operation Regulations or State Supply Code, and that too on the basis of the recommendations of the Committee of the Electricity Board; and, in this case, the State Commission was fully competent to decide the matter of the appellant/petitioner as non-compliance of the provisions of the Electricity Act, conditions, Rules and Regulations by the Electricity Board was reported in the petition with certain prayers.

This Tribunal further observed that, since the matter was an old one and the State Commission had decided the matter on merits including on the jurisdictional issue, they did not find it appropriate and logical to remand the matter to the State Commission for deciding the said controversy as the appellant had been billed and charged since 2005 as per the meter reading recorded in the meter installed at the grid sub-station of the Electricity Board; this was not a fit case for remand, in the light of the fact that the Consumer Forum, set up under Section 42(5) of the Electricity Act 2003 for redressal of grievances of the Electricity Board consumers, in Case No.1515/4/08/032 titled M/s Amba Metals, Kala Amb Vs. HPSEBL and Others, had directed the Electricity Board, the respondent herein, that metering be done at one point and adding of differences etc. be discontinued with immediate effect; the said order dated 29.12.2012 fully covered the case of the appellant, and hence the order dated 29.12.2012 was applicable to the case of the appellant; the appellant was fully entitled to the benefit of the said order dated 29.12.2012 of the State Electricity Consumer Forum; the conditions of the appellant had force and the respondents contentions were meritless; and, consequently, both the issues were hereby decided in favour of the appellant and against Respondent No.2 herein.

All the findings and observations made by the State Commission in the impugned order dated 24.08.2013 were set aside, and were substituted

by the findings recorded in the judgment; and the appeal was held liable to be allowed.

While allowing the appeal and setting aside the order passed by the State Commission in Petition No. 181 of 2012 dated 24.08.2013, this Tribunal observed as under:-

> *"The Petition No. 181 of 2012, filed by the appellant/petitioner, before the State Commission seeking directions to Himachal Pradesh State Electricity Board Ltd., the R.No.2, herein, to re-do the calculations and overhaul the appellant's accounts by taking into consideration only consumption recorded by the energy meter installed at the appellant's premises and to issue the bills in future on the basis of meter reading recorded by meter installed at the appellant's premises and also to restrain the Electricity Board from raising the monthly bills on the basis of consumption recorded by meter installed at the grid sub-station and also direct the Board to re-fund excess amount so charged since the date of 2005 is allowed with interest @ 5% p.a. The respondent No.2 HPSEBL is accordingly ordered. The State commission, Respondent No.1, is further directed to ensure compliance of this order"*

The Petitioner herein filed EP No. 04 of 2016 before this Tribunal seeking execution of the judgment/order of this Tribunal in Appeal No. 73 of 2014 dated 09.09.2015. In a batch of EPs, ie in EP Nos. 2, 3, 4, 5 and 6 of 2016, this Tribunal passed a common order dated 12.10.2017 which reads as under:-

> "After hearing the parties we were informed that subsequent to this Tribunal's judgment dated 18.12.2015 in Appeal No. 188 of 2014, Appeal No. 189 of 2014, Appeal No. 190 of 2014, Appeal No. 191 of 2014, Appeal No. 192 of 2014, Appeal No. 194 of 2014

and Appeal No. 195 of 2014, the State Commission has passed a reasoned order dated 05.10.2016 wherein the State Commission has ordered as under:

> *"In light of the foregoing discussions, the Commission, by invoking the provisions contained in paras 9.5 and 9.6 of the Supply Code, 2009, hereby orders that the amount received or to be received as per para 3.2.2 of the Supply Code, 2009 for grant of the Power Availability Certificate (PAC) in respect of the Contract Demand applied by consumers/applicants be adjusted in accordance with the mechanism proposed in para-9, read with item (iv) under para-16 of this Order."*

We have also been informed that even this Order dated 05.10.2016 has been challenged by the Execution Petitioners.

In light of the above, Execution Petition No. 02 of 2016 in Appeal No. 188 of 2014, Execution Petition No. 03 of 2016 in Appeal No. 190 of 2014, Execution Petition No. 04 of 2016 in Appeal No. 73 of 2014, Execution Petition No. 05 of 2016 in Appeal No. 194 of 2014 and Execution Petition No. 06 of 2016 in Appeal No. 192 of 2014 stand disposed of as infructuous."

Thereafter the Petitioner filed EP No. 9 of 2024 under Section 120(3) of the Electricity Act seeking execution of the judgment of this Tribunal in Appeal No. 73 of 2014 dated 09.09.2015. The relief sought by the Petitioner in EP No. 9 of 2024 is to direct the Respondents to give effect to/ comply with the directions of this Tribunal in its judgement in Appeal No. 73 of 2024 dated 09.09.2015; and to direct the Respondent Board to refund the amount of Rs.1,56,70,733/- (Rupees One Crore Fifty Six Lakhs Seventy Thousand and Seven Hundred Thirty Three only) along with interest and future interest to the Petitioner at the earliest and within such period as deemed fit by this Tribunal.

II. RIVAL CONTENTIONS:

Shri Ajay Vaidya, Learned Counsel for the Execution Petitioner, would contend that the error in the order of this Tribunal dated 12.10.2017 is an accidental error which can only be corrected under Section 152 CPC; and, even otherwise, a second Execution Petition can be filed under Section 48 read with Order 21 of the Civil Procedure Code as long as the second execution petition is filed within limitation. Reliance is placed by the Learned Counsel in this regard on **Bhagyoday Cooperative Bank Limited v. Ravindra Balakrishna Patel (2022) 14 SCC 417.**

While questioning the maintainability of the present applications, and contending that an error, such as the one committed by this Tribunal in the afore-extracted order dated 12.10.2017, cannot be rectified under Section 152 of the Civil Procedure Code suo motu, that too after a lapse of seven years after the earlier order was passed by this Tribunal on 12.10.2017, Shri Anand K. Ganesan, Learned Counsel for the Respondent in these IAs, would fairly state that EP No. 4 of 2016 in Appeal No. 73 of 2014 did not form part of the batch of EPs, (ie EP. No. 2, 3, 5 and 6 of 2016) which were filed seeking execution of the judgement/order of this Tribunal in Appeal Nos. 188, 189, 190, 191, 192, 194 and 195 of 2014 dated 18.12.2015; and, while these EPs were the subject matter of the order of this Tribunal dated 12.10.2017, EP.No.4 of 2016 was not. Reliance is placed by the Learned Counsel for the Respondent in this regard on **(1) State of Punjab v. Darshan Singh (2004) 1 SCC 328 and (2) Bijay Kumar Saraogi v. State of Jharkhand (2005) 7 SCC 748.**

Sri Anand K. Ganesan, Learned Counsel for the Respondent, would further contend that a second Execution Petition is not maintainable; Section 48 of the Civil Procedure Code has been repealed; and as held by the Supreme Court, in **Dipali Biswas and others v. Nirmalendu**

Mukherjee and others 2021 SCC OnLine SC 869, a second execution petition is barred by the principles of res judicata under Section 11 of the Civil Procedure Code.

III. SECTION 152 CPC: ITS SCOPE:

Section 152 of the Civil Procedure Code relates to amendment of judgment/decrees or orders, and stipulates that clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may, at any time, be corrected by the Court either of its own motion or on the application of any of the parties. Exercise of the power, under Section 152 CPC, contemplates the correction of mistakes by the Court and does not contemplate the passing of effective judicial orders after judgment, as the Court becomes functus officio thereafter, and is not entitled to vary the terms of the judgment passed earlier. (**Dwaraka Das v. State of M.P. (1999) 3 SCC 500**).

In order to invoke the powers under Section 152 of the Code, two conditions must be present. First, there has to be a judgment or decree or an order, as the case may be, and second, the judgment or decree or order, as the case may be, must contain any clerical or arithmetical error for its rectification. In other words, Section 152 of the Code contemplates that the court has passed the judgment, decree or the order and the same contains a clerical or arithmetical error. **(Sir Sobha Singh & Sons (P) Ltd. v. Shashi Mohan Kapur, (2020) 20 SCC 798).** The expression— “accidental slip or omission” in Section 152 is an error due to a careless mistake or omission unintentionally made. Such an error should be apparent on the face of the record, that is to say, it is not an error which depends for its discovery, on elaborate arguments on questions of fact or law. **(Srihari v. Syed Maqdoom Shah, (2015) 1 SCC 607; Master Construction Co. (P) Ltd. v. State of Orissa: AIR 1966 SC 1047).**

Section 152 CPC cannot be invoked to modify, alter or add to the terms of the original judgment so as to pass an effective judicial order after judgment is pronounced in the case. As correction is of the mistake or omission, which is accidental and not intentional, the merits of the case cannot be gone into. (**Dwaraka Das (1999) 3 SCC 500; Jayalakshmi Coelho v. Oswald Joseph Coelho (2001) 4 SCC 181**). The power of rectification of clerical or arithmetical errors or an accidental slip does not empower the Court to reconsider the merits of the case to come to a different conclusion. (**Jayalakshmi Coelho (2001) 4 SCC 181**). Inadvertent error not effecting the merits of the case may be corrected under Section 152 C.P.C. by the Court which passed the decree. **(Pratibha Singh vs Shanti Devi Prasad: (2003) 2 SCC 330; Girreddy Suryanarayana Reddy v. Land Acquisition Officer, 2015 SCC OnLine Hyd 306).**

The power, under Section 152 CPC, inheres in the Court, which passed the judgment, to correct a clerical mistake or an error arising from an accidental slip or omission, and to vary its judgment so as to give effect to its meaning and intention. (**Samarendra Nath Sinha v. Krishna Kumar Nag: AIR 1967 SC 1440)**. Inherent powers are available to all Courts and authorities irrespective of whether the provisions contained under Section 152 CPC may or may not strictly apply to any particular proceeding. Where it is clear that a mistake had accidently crept in something which the Court intended to do, due to a clerical or arithmetical mistake, it would only advance ends of justice to enable the court to rectify such a mistake. (**Jayalakshmi Coelho (2001) 4 SCC 181**).

The principle behind Section 152 CPC is that no one should suffer due to the mistake of the Court and whatever is intended by the Court, while passing the order, must be properly reflected therein, otherwise it would only be destructive of the principle of advancing the cause of justice.

(**Jayalakshmi Coelho (2001) 4 SCC 181**). The basis of the provision, in Section 152 CPC, is found on the maxim *actus curiae neminem gravabit* i.e. an act of the Court shall prejudice no man. Hence, an unintentional mistake of the Court which may prejudice the cause of any party must be rectified. (**Jayalakshmi Coelho (2001) 4 SCC 181; Assam Tea Corpn. Ltd. v. Narayan Singh AIR 1981 Gau 41).**

There are two important principles on the basis of which Section 152 CPC has been enacted. The first, as noted above, is the maxim that an act of the Court shall prejudice no man. The other is that the Court has a duty to ensure that its records are true, and they represent the correct state of affairs. It is because these are considered to be some of the highest duties of Courts that, in Section 152 C.P.C, it has been provided that, even in the absence of any move on the part of the parties, the Court can, of its own motion, make the correction. (**Puthan Veettil Sankaran Nair v. Poomulli Manakkal Moopil Sthanam Parameswaran Namboodiripad AIR 1970 Ker 57)**.

IV. IS DELAY IN EXERCISING JURISDICTION UNDER SECTION 152 CPC FATAL?

If the conditions laid down in Section 152 C.P.C. are satisfied, it is obligatory for the Court to order correction. (**Kuruvilla Thomas, Maliakel, Kanjirappally v. State Bank of Travancore AIR 1989 Ker 68; Chandra Kumar Mukhopadhya v. S.B. Debi AIR 1924 Cal 895; Puthan Veettil Sankaran Nair AIR 1970 Ker 57**). The intention of the law is to make it obligatory for the Court, whenever any mistake is discovered, to correct it, and Section 152 merely emphasises that duty of the Court by saying that it may be done at any time. (**Chandra Kumar Mukhopadhya AIR 1924 Cal 895; Puthan Veettil Sankaran Nair: AIR 1970 Ker 57)**.

The power to correct clerical or arithmetical mistakes in its judgments, decrees or orders or errors arising therein from any accidental slip or omission, can be exercised at any time by a Court. In Section 152 CPC no time limit is fixed for making an amendment in a judgment which has been occasioned by an accidental slip or error. Such an amendment may be made at any time subject, of course, to equities which may have arisen in favour of the party against whose interest the amendment is to be made. (**Jai Narain v. Chhedalal AIR 1960 All 385; Puthan Veettil Sankaran Nair AIR 1970 Ker 57)**. Clerical or arithmetical mistakes in judgments, or errors arising therein from any accidental slip or omission, may, at any time, be corrected by the Court. **(L. Janakirama Iyer v. Nilakanta Iyer AIR 1962 SC 633; Samarendra Nath Sinha AIR 1967 SC 1440).** If any such error is brought to its notice in any manner whatsoever, and at any time whatsoever, the Court has the power to correct errors of a clerical nature. To hold otherwise would mean that the Court is powerless even after discovering that a particular sentence in a judgment is absurd. (**Jai Narain AIR 1960 All 385; Puthan Veettil Sankaran Nair AIR 1970 Ker 57).**

The power of correction, under Section 152 CPC, can be exercised at any time. It is the obligation of the Court, when it comes to know that such a mistake has occurred, to correct it. It matters little that its attention, to the accidental slip or omission, has been drawn after a long delay. (**Mahendra Singh v. State of Uttarakhand, 2020 SCC OnLine Utt 332).**

Errors arising from an accidental slip can be corrected subsequently, even in a judgment pronounced and signed by the Court. (**L. Janakirama Iyer AIR 1962 SC 633; Samarendra Nath Sinha: AIR 1967 SC 1440)**. The Court is not functus officio with respect to its power to correct its judgment. The fact that the order has already been executed, and is therefore dead, is of no consequence, and of no importance, so far as the question whether the amendment asked for should be allowed or not. The fact that the

judgment has been implemented does not take away the inherent power of the Court to allow the amendment asked for in its judgment, if it is fit to be allowed in view of the provisions of Sections 151 and 152 of the Code. (**Puthan Veettil Sankaran Nair: AIR 1970 Ker 57).** The Court will, however, not make any correction without hearing the parties whose interests are likely to be affected. (**Jai Narain AIR 1960 All 385; Puthan Veettil Sankaran Nair AIR 1970 Ker 57).**

The delay in correcting these errors matters little, since such errors can be corrected at any time. The order, execution of which is sought by the Petitioner herein, was passed by this Tribunal in Appeal No. 73 of 2014 dated 09.09.2015. As Article 136 of the Schedule to the Limitation Act prescribes the period of limitation, for filing a petition seeking execution of any decree or order of any civil court, (other than a decree granting mandatory injunction), as 12 years, but for the order passed by this Tribunal in EP No. 2 of 2016 and batch dated 12.10.2017 (which included E.P.No.4 of 2016 filed by the Petitioner herein seeking execution of the judgement/order in Appeal No. 73 of 2014 dated 09.09.2015), any EP, filed even as on the date of passing this order, would be well within the period of limitation stipulated in the Limitation Act for filing a petition seeking execution of the judgement/order of this Tribunal in Appeal No.73 of 2014 dated 09.09.2015.

V. CAN POWER UNDER SECTION 152 CPC BE EXERCISED SUO-MOTU?

As the inherent power, which the Court possesses, must be exercised by it even in a case where none of the parties to the proceedings have invoked its jurisdiction seeking such correction, this Tribunal may not be justified in refusing to correct an accidental slip or omission in the earlier

order of this Tribunal on this score. **(Mahendra Singh v. State of Uttarakhand, 2020 SCC OnLine Utt 332**).

Further, the power under Section 152 explicitly stipulates that the power under the said provision can be exercised by the Court either suo motu or on the application of any of the parties. It is well settled rule of statutory interpretation that when words of statute are clear, plain or unambiguous, i.e., they are susceptible to only one meaning. The Courts are bound to give effect to that meaning irrespective of the consequences. **(Arkey Investment (P) Ltd. v. Kausar Sultan, 2011 SCC OnLine MP 511).** The power conferred by Section 152 to make corrections in an order or decree 'on its own motion' would mean powers which can be exercised 'sua sponte', i.e. on its own. The mere fact that there is an application too for such corrections is immaterial. Once the Court has an option to exercise powers sua sponte and it chooses to do that, that is the end of it. **(Mahendra Singh v. State of Uttarakhand, 2020 SCC OnLine Utt 1352).** The mistakes and errors such as the one mentioned in Section 152 of the CPC can either be corrected on an application of any of the parties or "of its own motion", by the Court, i.e. sua sponte. The Courts always have powers to make correction suo motu in decree in order to make it in conformity with the judgment. **(Mahendra Singh v. State of Uttarakhand, 2020 SCC OnLine Utt 1352).**

As the power to correct accidental errors in judgments or orders can not only be exercised by this Tribunal suo moto but can also be exercised at any time, the fact that the prayers in both the afore-said I.As could have been more specific and unambiguous, and the correction being made is seven years after EP No.4 of 2016 was dismissed as infructuous by order of this Tribunal dated 12.10.2017, need not detain us as the power to correct errors in its orders, occasioned by an accidental omission or

mistake, can always be exercised by this Tribunal suo-motu or even belatedly

VI. SITUATIONS IN WHICH POWER UNDER SECTION 152 CAN BE EXERCISED:

Exercise of power under Section 152 CPC should be confined to something initially intended but left out, or added against such an intention. (**Jayalakshmi Coelho (2001) 4 SCC 181; Mahendra Singh v. State of Uttarakhand, 2020 SCC OnLine Utt 332**). On the kind of orders which can be corrected, it must be borne in mind that, while an arithmetical mistake is a mistake of calculation, a clerical mistake is a mistake in writing or typing, whereas an error arising out of or occurring from an accidental slip or omission is an error due to a mistake on the part of the Court which is liable to be corrected. Such omissions are attributable to the Court which may say something or omit to say something which it did not intend to say or omit. (**Master Construction Co. (P) Ltd vs State of Orissa: AIR 1966 SC 1047; L. Janakirama Iyer AIR 1962 SC 633; Jayalakshmi Coelho (2001) 4 SCC 181).**

The accidental slip or omission by the Court may be attributed to the Judge himself. He may say something or omit to say something which he did not intend to say or omit. This is described as a slip or omission in the judgment itself. The obvious instance is a slip or omission to embody in the order something which the court in fact ordered to be done. The cause for such a slip or omission may be the Judge's inadvertence or the advocate's mistake. **(Master Construction Co. (P) Ltd vs State of Orissa: AIR 1966 SC 1047**).

Cases in which the Court can interfere, after the passing and entering of the judgment, are: (1) where there has been an accidental slip in the judgment as drawn up, in which case the Court has the power to rectify it,

and (2) where the Court itself finds the judgment as drawn up does not correctly state what the Court had actually decided and intended. (**R.M.K.R.M.Somasundaram Chetty v. M.R.M.V.L.Subramanian Chetty AIR 1926 PC 136; Ainsworth v. Wilding [1896] 1 Ch. 673**). If it be once made out that the order passed does not express the order actually made, the Court has ample jurisdiction to set that right, whether it arises from a clerical slip or not. (**In re Swire, Mellor v. Swire [L.R.] 30 Ch.D. 239; R.M.K.R.M. Somasundaram Chetty AIR 1926 PC 136).**

If the Court finds that the order, as passed and entered, contains an adjudication upon that which the Court in fact has never adjudicated upon, then it has jurisdiction which it will, in a proper case, exercise to correct its order so that it may be in accordance with the order really pronounced. (**In re. Swire, Mellor v. Swire [L.R.] 30 Ch.D. 239; R.M.K.R.M. Somasundaram Chetty AIR 1926 PC 136; Puthan Veettil Sankaran Nair AIR 1970 Ker 57)**. If it is made out that the order, whether passed and entered or not, does not express the order actually made, the Court has ample jurisdiction to set that right, whether it arises from a clerical or accidental slip. (**In re. Swire, Mellor v. Swire [L.R.] 30 Ch.D. 239; Puthan Veettil Sankaran Nair AIR 1970 Ker 57**).

It does appear from the first paragraph, of the afore-extracted order of this Tribunal, in E.P.No.2,3,4,5 and 6 of 2016 dated 12.10.2017, that this Tribunal was considering execution of only its judgment in Appeal Nos. 188, 189, 190, 191, 192, 194 and 195 of 2014 dated 18.12.2015. While taking note of the judgment passed in these Appeals, this Tribunal also noted that, subsequently, the State Commission had passed a reasoned order dated 05.10.2016 which had also been challenged by the said Execution Petitioners.

It is clear, therefore, that the appellate judgements, referred to in the afore-said order of this Tribunal dated 12.10.2017, did not include the judgment of this Tribunal in Appeal No. 73 of 2014 dated 09.09.2015, and yet EP No. 4 of 2016 in Appeal No. 73 of 2014 was disposed of, along with the other EPs, (ie EP Nos. 2,3,5 and 6 of 2016) as infructuous. Thus, disposal of EP No. 4 of 2016 (filed seeking execution of the judgement/order of this Tribunal in Appeal No. 73 of 2014 dated 09.09.2015) as infructuous, along with EPs 2, 3, 5 and 6 of 2016, was an accidental omission/error on the part of this Tribunal in as much as the said EP No. 4 of 2016 had no connection with, and did not form part of the batch of EPs (ie EPs 2, 3, 5 and 6 of 2016) with respect to which alone was the order dated 12.10.2017 passed by this Tribunal.

It is not in dispute, and has fairly been agreed to by Sri Anand. K. Ganesan, Learned Counsel for the Respondent, that EP No.4 of 2016 (filed by the Petitioner herein seeking execution of the judgement of this Tribunal in Appeal No.73 of 2014 dated 09.09.2015) had nothing in common with the batch of EPs, ie EP.No.2, 3,5 and 6 of 2016 (which were filed seeking execution of the judgment of this Tribunal in Appeal Nos. 188 to 195 of 2014 dated 18.12.2015). Consequently, its inclusion along with the other EPs, and in a common order being passed by this Tribunal dated 12.10.2017, was evidently an accidental slip or omission on the part of this Tribunal, as this Tribunal never intended to adjudicate upon E.P.No.4 of 2016 which was filed seeking execution of the judgement of this Tribunal in Appeal No. 73 of 2014 dated 09.09.2015. We are, therefore, justified in exercising jurisdiction under Section 152 CPC to correct the earlier order of this Tribunal dated 12.10.2017 so that it may be brought in accordance with the order really pronounced.

It is not as if, by correcting the accidental slip/ error in the order passed by this Tribunal on 12.10.2017, this Tribunal would be entertaining

an Execution Petitions which is otherwise barred by limitation for, as noted hereinabove, an Execution Petition even if filed today (ie the date of pronouncement of this order), seeking execution of the judgment/order of this Tribunal in Appeal No. 73 of 2014 dated .09.2015, would be well within the stipulated period of limitation of 12 years.

VII. JUDGEMENTS RELIED ON BEHALF OF THE RESPONDENT:

In **Bijay Kumar Saraogi v. State of Jharkhand, (2005) 7 SCC 748,** the lands belonging to the appellant were acquired under the provisions of the Land Acquisition Act, 1894. The Collector made his award against which the appellant preferred a reference under Section 18 of the Land Acquisition Act and the same was pending when the Land Acquisition Amendment Bill was introduced in Parliament on 30-4-1982 and the Amendment Act came into force from 24-9-1984. In between these two dates, the Reference Court made its award on 10-2-1983. After the award, the appellant received the amount awarded to him and did not prefer a further appeal therefrom. In the year 1995, the appellant filed an application under Section 152 CPC before the Sub-Judge claiming that he was entitled to the benefit conferred by Sections 23(2) and 28 of the Land Acquisition Act as amended by the Amendment Act. The learned Sub-Judge held that the said application was not maintainable, and the said order was affirmed by the High Court.

It is in this context that the Supreme Court, following its earlier judgement in **State of Punjab v. Darshan Singh: (2004) 1 SCC 328,** held that it saw no reason to interfere with the order of the High Court because Section 152 CPC can be invoked for the limited purpose of correcting clerical errors or arithmetical mistakes in the judgment; the Section cannot be invoked for claiming a substantive relief which was not granted under

the decree or as a pretext to get the order, which has attained finality, reviewed.

In **State of Punjab v. Darshan Singh, (2004) 1 SCC 328,** the respondent, as the plaintiff, had filed a suit for declaration that the order passed by the State removing him from service was unconstitutional, illegal, null and void. A further prayer was sought for a declaration that he was entitled to have his pay fixed in the appropriate scale by counting the period of his alleged forced absence.

The respondent-Plaintiff was appointed in 1970 and was removed from service by an order dated 13-3-1977. He made several representations to the Government, and by order dated 14-2-1979 the Government passed an order appointing him as a Junior Compositor and, consequentially, a fresh order of appointment was issued appointing him as a Junior Compositor on temporary basis as a new appointee. Three issues were framed in the Suit:- (*1)* Whether the plaintiff is entitled to the declaration prayed for?; (*2*) Whether the suit is not maintainable?; and (*3*) Whether the suit is bad for non-joinder and misjoinder of necessary parties?"

After considering the evidence on record the Suit was dismissed. An appeal was preferred before the Additional District Judge who held that the dismissal was bad, and when the plaintiff was taken back in service it could not have been ordered that he will be taken back as a fresh recruit. While granting this relief the following order was also passed:

> *"It is made clear that it is up to the Department to grant him or not to grant him increments for the past service rendered by him. It will be again for the Department to decide whether he is or he is not fit to be promoted after taking his past service into account."*

The respondent employee filed an application under Section 152 CPC claiming that the afore-quoted directions were not in order and deserved to be deleted. The Additional District Judge, Patiala deleted the afore-quoted portion on the ground that, if the said portion remains, it would have the effect of neutralizing the relief granted to the plaintiff-appellant before it. In the aforesaid manner, the judgment and decree passed in appeal was reviewed.

The State filed two Second Appeals before the High Court. The first appeal related to the original judgment of the first appellate court, while the second one related to the order passed under Section 152 of the Code modifying the judgment. The High Court, by a consolidated judgment in the two appeals, held that, when the employee was taken back, in service it could not have been ordered that he will be taken back as a fresh recruit; and the plaintiff employee's services should not have been terminated without assigning any reason after six to seven years of service.

It is in this context that the Supreme Court, in **Darshan Singh**, held that exercise of the power under Section 152 CPC contemplated the correction of mistakes by the court of its ministerial actions, and did not contemplate passing of effective judicial orders after the judgment, decree or order; after the passing of the judgment, decree or order, the same becomes final subject to any further avenues of remedies provided in respect of the same; the very court or tribunal cannot and, on mere change of view, was not entitled to vary the terms of the judgments, decrees and orders earlier passed except by means of review, if statutorily provided specifically therefor and subject to the conditions or limitations provided therein; the powers under Section 152 of the Code were neither to be equated with the power of review nor could it be said to be akin to review; the corrections contemplated were of only accidental omissions or mistakes and not all omissions and mistakes which might have been committed by

the court while passing the judgment, decree or order; the omission sought to be corrected, which goes to the merits of the case, is beyond the scope of Section 152 as if it is looking into it for the first time, for which the proper remedy for the aggrieved party, if at all, is to file an appeal or revision before the higher forum or review application before the very forum, subject to the limitations in respect of such review; the Section cannot be pressed into service to correct an omission which is intentional, however erroneous that may be; the courts below were liberally construing and applying the provisions of Sections 151 and 152 of the Code even after passing of effective orders in the lis pending before them; and no court could, under the cover of the aforesaid Sections, modify, alter or add to the terms of its original judgment, decree or order.

In **Bijay Kumar Saraogi v. State of Jharkhand, (2005) 7 SCC 748,** by the application filed under Section 152 CPC, the appellant had claimed benefits under Sections 23(2) and 28 as inserted, by the Land Acquisition Amendment Act, 1984, in the Land Acquisition Act, 1894. As a substantive relief was sought by the Appellant, in the application filed by them under Section 152 CPC, the Supreme Court held that, while clerical errors or arithmetical mistakes in the judgment can be sought to be corrected under Section 152, the said provision could not be invoked for claiming a substantive relief which was not granted under the decree, or as a pretext to get the order, which has attained finality, reviewed.

In **State of Punjab vs Darshan Singh: (2004) 1 SCC 328**, an application was filed, under Section 152 CPC, seeking deletion of certain observations made by the appellate Court, while granting relief to the Appellant that he be taken back into service. These observations were to the effect that it would be upto the Department to grant the appellant or not to grant him increments for the past service rendered by him, and it would be again for the Department to decide whether the appellant is or is not fit

to be promoted after taking his past service into account. The Supreme Court held that deletion of these observations (on merits) could not be sought in a petition under Section 152, for a correction which goes to the merits of the case cannot be made under Section 152 CPC, and no court can, under the cover of Sections 151 and 152 CPC, modify, alter or add to the terms of its original judgment, decree or order.

Unlike in **Bijay Kumar Saraogi** and in **Darshan Singh**, in the present case, correction of the order of this Tribunal dated 12.10.2017 is neither to grant the petitioner a substantive relief nor is it a correction of the order on its merits. The accidental omission/mistake, which is required to be corrected, is the deletion of EP No. 4 of 2016 from the cause title and the sentence *"Execution Petition No. 4 of 2016 in Appeal No. 73 of 2014"* in the operative part of the order of this Tribunal dated 12.10.2017, and nothing more. The reason why such a correction is necessitated is because EP No. 4 of 2016 filed by the petitioner was disposed of as infructuous by the order of this Tribunal dated 12.10.2017 though EP No. 4 of 2016 did not form part of the batch of EPs in EP Nos. 2, 3, 5 & 6 of 2016. As noted hereinabove, EP Nos. 2, 3, 5 & 6 of 2016 were filed seeking execution of the judgment of this Tribunal in Appeal Nos. 188, 189, 190, 191, 192, 194 & 195 of 2014 dated 18.12.2015, whereas EP No. 4 of 2016 was filed by the Appellant seeking execution of a wholly unconnected judgment of this Tribunal in Appeal No. 73 of 2014 dated 09.09.2015. Neither the EP filed by the petitioner nor the appellate judgement under execution in the said EP, had any connection with the batch of EPs in EP No.2 of 2016 and batch nor did the judgement in Appeal No. 73 of 2014 dated 09.09.2015 have anything in common with the judgement in Appeal Nos.188 of 2014 and batch dated 18.12.2015.

Though Appeal No. 73 of 2014 had no connection whatsoever with Appeal Nos. 188 to 192 & 194 of 2014 dated 18.12.2015, and though EP

No. 4 of 2016 was wholly un-related to EP Nos. 2, 3, 5 & 6 of 2016, this Tribunal had, evidently by oversight, disposed of EP No. 4 of 2016, along with EP Nos. 2, 3, 5 & 6 of 2016, as infructuous by its order dated 12.10.2017. As noted hereinabove, the fact that EP No. 4 of 2016 is wholly unconnected with EP Nos. 2, 3, 5 & 6 of 2016, has not been disputed by Sri Anand K. Ganesan, Learned Counsel for the Respondent. Clubbing EP No. 4 of 2016 along with the other EPs, though there was no connection between them, was evidently an accidental mistake on the part of this Tribunal, which necessitates correction, and such correction can only be undertaken in exercise of powers analogous to Sections 151 and 152 CPC.

VIII. CONCLUSION:

The accidental omission/ mistake in the order of this Tribunal dated 12.10.2017 shall stand corrected and reference to EP No. 4 of 2016 in the cause title of the said order as also the sentence *"Execution Petition No. 4 of 2016 in Appeal No. 73 of 2014"* in the operative part of the said order shall stand deleted. As a result, the afore-said order of this Tribunal dated 12.10.2017 would relate only to EP Nos. 2, 3, 5 & 6 of 2016, and not to EP No. 4 of 2016. Consequently, EP No. 4 of 2016 shall stand restored to file and shall be taken up for hearing in its turn. As we are now passing an order restoring EP No. 4 of 2016 to file, EP No. 9 of 2024, filed seeking execution of the very same judgment in Appeal No. 73 of 2014 dated 09.09.2015, is rendered superfluous, and is accordingly closed.

It is un-necessary for us, therefore, to examine the rival contentions as to whether or not a second EP seeking execution of the very same judgment is maintainable, or whether it constitutes res judicata. It is also un-necessary for us to consider the scope and purport of the judgments of the Supreme Court, in **Bhagyoday Coop. Bank Ltd. v. Ravindra Balkrishna Patel, (2022) 14 SCC 417** and **Dipali Biswas v. Nirmalendu**

Mukherjee, 2021 SCC OnLine SC 869, relied on by the Learned Counsel, on either side, in this regard.

Consequent on restoration of EP No. 4 of 2016 to file, IA Nos. 1515 and 1609 of 2024 stand disposed of, and EP No. 9 of 2024, which is thereby rendered superfluous, is accordingly closed.

Pronounced in the open court on this ***27th day of January, 2025.***

(Seema Gupta)
Technical Member (Electricity)

(Justice Ramesh Ranganathan)
Chairperson

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REPORTABLE/~~NON-REPORTABLE~~

tpd