IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

RP No.11 of 2025
IN
Appeal No. 339 of 2018

Dated : 3rd November, 2025

Present: Hon'ble Ms. Seema Gupta, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

Investment & Precision Casting Ltd
Through its Director
Registered Office: Nari Road, Bhavnagar,
Gujarat, India – 364006
Email: direct1@ipcl.in … Petitioner(s)

Versus

1. **Paschim Gujarat Vij Company Limited**
Through its Managing Director
Office: Nana Mava Main Road,
Near Bhaktinagar Railway Station,
Laxminagar, Rajkot,
Gujarat, India – 360004
Eamil: cs.pgvcl@gebmail.com

2. **Gujarat Electricity Regulatory Commission**
Through its Secretary
6th Floor, Gift One,
Road 5-C Zone 5, Gift City,
Gandhinagar, Gujarat,
India – 382355

Email: secretary@gercin.org … Respondent (s)

Counsel for the Appellant(s)	:	Sakie Jakharia for App. 1
Counsel for the Respondent(s)	:	Ranjitha Ramachandran Srishti Khindaria Aneesh Bajaj for Res. 1

ORDER

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The Petitioner is seeking review of the judgement dated 3rd December, 2024 of this Tribunal passed in Appeal No. 339 of 2018 filed by 1st Respondent whereby the appeal has been partly allowed and the impugned order dated 15th July, 2015 of the 2nd Respondent i.e. Commission has been modified.

2. The petitioner is a consumer of the 1st Respondent i.e. Distribution Licensee in the State of Gujarat having a contract demand of 2800 KVA. It has also set up two 1.25 MW Wind Turbine Generators at village Lamba and Baradiya in Distract Jamnagar which were commissioned on 19th June, 2006 and 3rd March, 2010 respectively. With respect to the WTG at village Lamba, the petitioner has signed a wheeling agreement with the 1st Respondent on 5th August, 2006 and with respect to the WTG at village Baradia, the petitioner has signed wheeling agreement dated 23rd February, 2010 with the 1st Respondent.

3. In addition to the wheeling of energy generated from these two captive WTGs, the petitioner is also purchasing 1.2 MW power through Short Term Open Access (STOA) as per the provisions of GERC Open Access Regulations, 2011. The petitioner is sourcing power from its captive WTGs as well as STOAs transactions and at the same time is maintaining its contract demand with the 1st Respondent – Distribution Licensee.

4. It is in this background that the issue in the appeal related to the methodology for energy accounting for the petitioner which consumes power from multiple sources.

5. In the said impugned order dated 15th July, 2015, the Commission had held that the energy purchased by the petitioner through STOA has to be accounted first against block wise consumption of the petitioner and the balance consumption in the month has to be accounted as either energy wheeled from its own WTG or the energy supplied by the Distribution Licensee. In so far as the energy wheeled from the WTGs by the petitioner is concerned, the Commission held that the energy generated from 2nd WTG commissioned on 3rd March, 2010 has to be accounted for next in priority after the STOA transactions and in case total energy generated from this WTG cannot be accounted for in this way, the surplus available has to be treated as deemed sale to the Distribution Licensee at a rate equal to 85% of the tariff decided by the Commission in its Order No. 1/2010. The Commission also held that the consumption remaining unaccounted for after above two adjustments shall be deemed to have been supplied from the energy generated from the first WTG commissioned on 19th June, 2006. It was also held by the Commission that any consumption left unaccounted for after all the above adjustments shall be treated as that supplied by the licensee i.e. the 1st Respondent and will be charged at the tariff rate applicable to the petitioner.

6. In the judgement under review, this Tribunal found the said methodology evolved by the Commission to be faulty and not acceptable. Accordingly, upon consideration of the rival submissions of the parties and the material on record, this tribunal evolved methodology for accounting of the power consumed by petitioner obtained from various sources which we extract hereinbelow:-

"Hence, in view of the above discussion, we hold that the energy wheeled from WTGs of the 1st respondent shall be accounted first and then the energy purchased through STOA and lastly the balance consumption, if any, against the contract demand with the distribution licensee. With regards to the wind power supplied by the two wind turbine generators of the 1st respondent, we affirm the methodology given by the Commission to the effect that the energy generated from second WTG commissioned on 03.03.2010 to be accounted first in priority. In case, the total energy generated by this WTG cannot be accounted for in a month, the surplus available has to be treated as deemed sale to the distribution licensee at a rate equal to the 85% of the tariff decided by the Commission in its order No.1/2010. The consumption remaining unaccounted for after the above adjustment shall be deemed to have been supplied by the generator from first WTG commissioned on 19.06.2006, either during the month of accounting or generated earlier or banked with the licensee."

7. Learned Counsel for the Petitioner vehemently argued that the methodology laid down by this Tribunal not only leads to undue enrichment on the part of the 1st Respondent at the cost of the petitioner but is also anomalous and suffers from serious error. She argued that this Tribunal has failed to consider that upon adopting the said methodology, the surplus energy will always be treated as “inadvertent flow” being transacted through STOA on monthly basis even though the said energy is not related to STOA transactions, it is entirely related to the captive wind generation for which the petitioner is entitled to banking for a period of one or a six months and treatment for surplus energy as being purchased by the Distribution Licensee. According to the Learned Counsel the said methodology will lead to absurdity, which aspect was not considered by this Tribunal while passing the judgement under review.

8. Learned Counsel also submitted that this Tribunal has erred in solely relying on the illustration presented by 1st Respondent while ignoring the objections to the same raised by the petitioner. It is argued by the Learned Counsel that the methodology suggested by the Distribution Licensee and approved by this Tribunal in the judgement under review suffers on two counts as under :-

> (i) *Denial of sale of surplus energy under wheeling agreement dated 23.02.2010 leading to a loss of Rs.3,37,284.45 (up to March 2014); and*
>
> (ii) *Denial of banking benefits of six months banking under 2002 policy and Wheeling Agreement dated 05.08.2006 leading to a loss of Rs.30,65,000.00 for not allowing banking of 4,63,472 units."*

9. Per contra, Learned Counsel for 1st Respondent has emphatically refuted the submissions of the petitioner's counsel and contended that the judgement under review does not suffer from any error apparent on the record. He urged us to dismiss the petition.

Our Analysis

10. 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."

11. 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)

12. 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.

13. 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.

14. 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."

15. 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*

<u>be open to review when any new or important matter of evidence has emerged after passing of thejudgment, 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</u>. 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. <u>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"</u> (Refer: Chajju Ram v. Neki Ram and Moran

Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius).”

16. When we examine the grounds on which the petitioner is seeking review of the judgement dated 3rd December, 2024 on the touch stone of the legal principles governing the disposal of the Review Petition, as extracted herein above, we do not find any merit in the Review Petition. From the averments made in the Review Petition as well as the submissions made by the Petitioner's Counsel, it is abundantly clear that the petitioner is not satisfied with the methodology of energy accounting evolved by this tribunal in the judgement under review and finds the same erroneous. There is a clear distinction between an erroneous decision as against an error apparent on the face of record. An erroneous decision can be corrected only by the superior court whereas an error apparent on the face of record only can be corrected by exercising review jurisdiction.

17. The Review Petition clearly appears to be an appeal in disguise, which is not permissible. The petitioner wants this Tribunal to substitute the methodology laid down in the judgement under review by some other methodology, which also is not permissible while exercising review

jurisdiction. The power of review can be exercised only where a glaring omission or a clear mistake is found in the judgement under review but not to substitute a view for the reason that view does not to be liking of the review petitioner. No such glaring mistake/omission in the judgement under review has been pointed out by the petitioner's counsel.

18. The petitioner has miserably failed to point out any error apparent on the face of record or a glaring error in the judgement under review justifying exercise of power of review by this Tribunal.

19. Hence, we do not find any merit in the Review Petition and is hereby dismissed.

Pronounced in the open court on this 3rd day of November, 2025.

(Virender Bhat)
Judicial Member

(Seema Gupta)
Technical Member (Electricity)

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REPORTABLE / ~~NON REPORTABLE~~

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