

4IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

COURT-I

IA NO. 1976 OF 2022 IN
APPEAL NO. 437 OF 2022 &
IA NO. 2245 OF 2022

Dated : 13.01.2023

Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member

In the matter of:

VEDANTA LIMITED

(Through its Authorized Representative)

1st Floor, Module C-2, Fortune Tower,
Bhubaneswar -751013, Odisha

... Appellant(s)

VERSUS

1. **ODISHA ELECTRICITY REGULATORY
COMMISSION**

Through Secretary

Bidyut Niyamak Bhawan,
Plot No. 4, Chunukoli, Shailashree Vihar,
Bhubaneshwar, Odisha – 751021

Respondent No.1

2. **GRID CORPORATION OF ODISHA LIMITED**

Through Chairman-cum-Managing Director,
Regd. Office: Janpath, Bhubaneswar – 751022

... Respondent No.2

3. **THE CHIEF LOAD DESPATCHER**

State Load Despatch Centre, OPTCL
P.O- Mancheswar Railway Colony
Bhubaneswar, Odisha -751017

... Respondent No.3

4. **THE CHIEF EXECUTIVE OFFICE,**

Tata power western Odisha Distribution
Company Limited, (TPWODL),
Jagruti Vihar, Burla, Sambalpur-768017

... Respondent No.4

5. **THE PRINCIPAL SECRETARY**

Department of Energy,
Government of Odisha
Odisha, 2nd Floor, Kharavel Bhawan

Gopabandhu Marg, Keshari Nagar,
Bhubaneswar Odisha 751001.

... Respondent No.5

**6. THE MANAGING DIRECTOR
ODISHA POWER TRANSMISSION
CORPORATION LIMITED**

Registered Office: Janpath, Bhubaneswar –
751022

... Respondent No.6

Counsel for the Appellant(s) : Mr. Basava Prabhu S. Patil, Sr. Adv.
Mr. Hemant Singh
Mr. Lakshyajit Singh
Mr. Harshit Singh
Ms. Lavanya Panwar

Counsel for the Respondent(s): Mr. G. Umapathy, Sr. Adv.
Mr. Rutwik Panda
Ms. Nikhar Berry
Ms. Anshu Malik for R-1

Mr. Maninder Singh, Sr. Adv.
Mr. R. K. Mehta
Mr. Prabhas Bajaj
Ms. Himanshi Andley for R-2

ORDER

PER HON'BLE MR. JUSTICE RAMESH RANGANATHAN, CHAIRPERSON

This appeal is preferred against the Order passed by the Orissa Electricity Regulatory Commission (hereinafter referred to as the "Commission") in Case No. 129 of 2021 dated 28.10.2022. Respondent No. 2 herein ie Grid Corporation of Odisha Limited (hereinafter referred to as "GRIDCO") filed an Application before the Commission, under Section 94(1)(f) of the Electricity Act, 2003 (the "Act" for short) read with Order 47 Rule-1 of the Code of Civil Procedure, 1908 (the "CPC" for short) and Regulation 70 of the Orissa Electricity Regulatory Commission (Conduct of Business) Regulations, 2004, (for short the "Regulations"), seeking review of the Order passed in Case No. 34 of 2018 dated 05.12.2021 whereby the Commission, while allowing GRIDCO to operate its PPA without losing its

entitlement under the same, had opined that Unit-II of the appellant shall normally operate as CGP; if, in any quarter, GRIDCO required power from the appellant for State consumption they could avail the same giving three months prior notice to the appellant, and avail the same for a period of at least three months; during that period the CGP will operate as IPP and GRIDCO will be required to pay fixed cost for the said period in addition to energy and other charges; if, at any time, it is found that the appellant had failed to supply IPP power after requisition by GRIDCO and was trading the same, they would have to pay, as compensation, two times the differential cost incurred by GRIDCO at a margin over and above the IPP power cost; in order to prevent dislocation in the current supply of power, Unit-II would continue as IPP for the current quarter; GRIDCO had to exercise its option to avail IPP power from the appellant, for the next quarter, within one month of the order failing which the IPP Unit –II of the appellant shall operate as CGP with effect from the 1st of January, 2022; thereafter, GRIDCO would have to give three months prior notice for availing power in any quarter; and the option of GRIDCO to avail IPP power should be prudently exercised in order to minimize the total power purchase cost and shall be scrutinized by the Commission at any time.

In the Order, now under appeal before us, the Commission allowed the application for review, directing that Case No.34 of 2018 be re-heard. While giving both sides an opportunity of re-hearing with reference to their pleadings/written submissions already filed in the said case, the Commission held that no new pleadings or written submissions shall be filed by either side without its leave; and, in view of this order, the rights and liabilities of both the sides stand relegated to the stage that prevailed prior to the order dated 05.10.2021 passed in Case No.34 of 2018. Aggrieved thereby, the present appeal.

I.RIVAL SUBMISSIONS:

Mr. Basava Prabhu S. Patil, learned Senior Counsel appearing on behalf of the Appellant, would submit that the Order under Appeal, passed

by the Commission in the exercise of its review jurisdiction, is bereft of reasons; except to record the rival contentions, the Commission has not dealt with any of them in arriving at the conclusion that Case No. 34/2018 necessitates re-hearing; the power conferred on the Commission, to review its earlier Order, is circumscribed by the provisions of the Civil Procedure Code; Order 47 Rule-1 CPC restricts exercise of the power of review only in the circumstances referred to therein; and in the absence of the Commission indicating, much less assigning, any reasons, as to why the earlier order necessitated review, the impugned order must be set aside.

Mr. Maninder Singh, learned Senior Counsel appearing on behalf of the second Respondent, would submit that the applications filed by the Appellant before the Commission, in Case No. 21/2015 and Case No. 34/2018, are itself not maintainable; the Commission lacks inherent jurisdiction to modify the terms and conditions specified in the PPA, as it is an agreement inter-parties which is binding on them; while the reasons therein may not be detailed or elaborate, the Order under Appeal indicates application of mind by the Commission in allowing the review; and, in any event, this Tribunal has jurisdiction to examine the contention, urged on behalf of the second Respondent, that both the earlier Orders passed by the Commission, in Case No. 21/2015 and Case No. 34/2018, are wholly without jurisdiction, and are null and void.

Mr. G. Umapathy, learned Senior Counsel appearing on behalf of the first Respondent, would rely on Regulations 70(1) and 76(1) of the Regulations to submit that the Commission has inherent power to review its earlier orders to meet the ends of justice. While supporting the submission of Mr. Maninder Singh, learned Senior Counsel, that the Order of the Commission is a reasoned Order, Learned Counsel would however contend that the Commission had rightly exercised its jurisdiction to entertain the earlier applications and the contentions urged on behalf of the 2nd Respondent, to the contrary, necessitates rejection.

As noted hereinabove, while the submission urged on behalf of the appellant is that the Commission has not assigned any reason for reviewing the earlier Order, in setting it aside and in directing re-hearing, the submission urged on behalf of GRIDCO is that the reasons assigned by the Commission suffice to justify its decision to review the earlier Order and to set it aside. It is necessary therefore to note, albeit in brief, the contents of the Order under appeal.

II, CONTENTS OF THE ORDER UNDER APPEAL:

In the Order under Appeal, the Commission noted the grounds on which the 2nd Respondent had sought review of the earlier order which, inter alia, were that the order dated 05.10.2021, in effect, amounted to a Review/Modification of the Order dated 27.01.2016 which had attained finality; the effect of the order dated 05.10.2021 was to obliterate the very basis and foundation of the order dated 27.01.2016; the action of the appellant, in not supplying full entitlement of power to GRIDCO from July, 2017 to December, 2019 in wilful and flagrant violation of the Commission's order dated 27.01.2016, which was based on the assurance/undertaking of the appellant, amounted to gross contempt of the Commission's order and, consequently, Petition No. 34 of 2018 filed by the appellant was not maintainable; the grant of the prayer of the appellant would render the MOU as well as the duly approved Long Term PPA between the appellant and GRIDCO redundant and nugatory; not only GRIDCO but also the consumers of the State at large would suffer irreparable loss and injury if they were deprived of cheaper power from Unit II of the appellant; the Commission had not considered the fact that the appellant was obliged to supply uninterrupted power to the State/GRIDCO as per the conditions laid down by the Commission in the order dated 27.01.2016; the Commission failed to appreciate that, for the last 10 years, GRIDCO has been making payment of the Fixed Charges, under the long term PPA dated 19.12.2012 which was valid till 2037, for the benefit of the consumers of the State, and therefore consumers of the State should not

be deprived of the said benefit; the Commission had failed to consider the fact that the Department of Energy, Government of Odisha had also disapproved of any such annulment of the long term PPA under which cheaper power was being procured by GRIDCO to meet the State demand; the order dated 05.10.2021 completely wiped out the rights of GRIDCO to procure IPP power from Unit #II by allowing it to normally operate as CGP; the order dated 05.10.2021 overrode the State Thermal Policy dated 08.08.2008 and the subsisting contract/PPA dated 19.12.2012 to procure 5% power at Variable /Energy Charge Rate (ECR) irrespective of whether Unit #2 operated as IPP or CGP; in the impugned order dated 05.10.2021, the Commission has not laid down conditions to avail/ withdraw power after giving requisition three months ahead in case of any exigency / dynamic situation which is quite normal in case of Power Load Generation Balance Scenarios; the Commission has not dealt with the submission of GRIDCO that the appellant cannot be allowed to make profit by violating the orders of the Commission and the provisions of the PPA to the prejudice of Consumers of the State; the Commission has not taken into consideration the specific facts pleaded or the contentions raised in the written statement dated 21.05.2021 filed in the said case; the same being errors apparent on record, the impugned order called for a review; and there were sufficient grounds to allow the review for removal of misconceptions manifesting the said order for the ends of justice. The Commission also noted that GRIDCO had cited several judgements.

The Commission then noted the contentions of the appellant, in resisting the application for review, which, inter-alia, were that the prayer of GRIDCO, if allowed, would amount to reversal of the entire order dated 05.10.2021 in Case No.34/2018 and, hence, the present petition was liable to be rejected in limine in as much as the Commission cannot act as a forum of appeal in respect of its own order; the application at hand deserved to be dismissed in as much as there was no error apparent on record; if at all there was any erroneous decision, the appropriate forum for seeking redressal

was that of Appeal but not the present review; the Commission was very much alive to the order dated 27.01.2016 in Case No.21/2015 as was revealed from the interim orders passed on 05.01.2021, 04.05.2021 etc. in Case No.34 of 2018; the contention that Case No.34 of 2018 is not maintainable, being barred by the principles of res-judicata, is not sustainable in view of the dynamic development of the power situation of the State in the aftermath of the order dated 27.01.2016; there was no breach/contravention on the part of the appellant qua the directions imparted by the Commission in the order dated 27.01.2016 or obligations under the PPA dated 19.12.2012; the issue of alleged shortfall in supply of power and the issue of compensation was pending adjudication before APTEL in DFR 296 of 2020, and GRIDCO could not agitate the same in an indirect manner as was being done in the present case; and there being no apparent error on the face of record, GRIDCO had no valid grounds to seek review of the order dated 05.10.2021 passed in Case No.34 of 2018, etc.

The Commission then examined the contention relating to the jurisdiction of a two judge bench of the Commission to review the order passed earlier by a three judge Bench. Following the order of this Tribunal, in Appeal No. 38 of 2022 and IA Nos. 256, 257 & 258 of 2022 dated 11.03.2022, the Commission held that, since it was presently functioning with the Officiating Chairperson and one Member, it was neither incompetent nor was it improper to entertain or dispose of the application for review.

The Commission then observed, at Paras 18 and 19 of its Order, as under:

“18. It is the unequivocal submission of the petitioner-GRIDCO and the Respondents 2 to 6 that the conclusion arrived at vide the impugned order on the basis of erroneous assumptions is opposed to public policy inasmuch as the same, if stands as it is, will cause serious prejudice and is detrimental to the interest of the State Consumers. This Commission, vide the order dated 27.01.2016 in Case No.21 of 2015, had emphasized that the Unit-II of the power plant of M/s Vedanta Ltd. being dedicated to the State, power from the said unit cannot be utilized for self consumption.

19. Although in the case at hand, it is argued by M/s. Vedanta Ltd. that while passing the impugned order, this Commission was conscious on the finding and conclusion recorded in the order dated 27.01.2016 in Case No.21/2015, yet we now find merit in the application at hand. Without expressing any opinion on the contentious issues, and having regard to the points raised by Petitioner-GRIDCO and on testing the same with the touchstone of the settled principles of law, and in order to rule out any possible prejudice to either side, the Commission feels it expedient to re-hear the Case No.34 of 2018”.

It is evident, from the afore-extracted paragraphs of the Order, that, except to state that they found merit in the application at hand and, in order to rule out any possible prejudice to either side, it felt it expedient to re-hear Case No.34 of 2018, the Commission has not even indicated, much less assigned reasons, why the earlier Order passed by it, in Case No.34 of 2018, necessitated review.

Before considering what the Commission, at the very least, ought to have indicated in the Order under Appeal, justifying its decision to review and set aside the earlier Order and to re-hear the matter, it is useful to take note of the powers conferred, by the Act, on the Commission to review its Orders.

III. SECTION 94(1)(f) OF THE ACT R/W ORDER XLVII RULE I CPC:

Section 94(1)(f) of the Act relates to the powers of the Appropriate Commission and, under sub section (1) (f) thereof, the Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil procedure, 1908 (5 of 1908) in respect of reviewing its decisions, directions and orders. The power of the Commission to review its earlier order is, therefore, governed by the provisions of Section 114 and Order 47 Rule 1 of the Civil Procedure Code (CPC). Section 114 CPC stipulates that, 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 the judgement to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit. Order XLVII CPC relates to review, and Rule 1 thereof to the application for review of judgement. Rule 1(1) of Order XLVII CPC stipulates that 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 of 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 judgement to the Court which passed the decree or made the order.

IV REVIEW : ITS SCOPE:

Order 47 Rule 1 of the Code provides for filing an application for review. The court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein. It may allow a review on three specified grounds, namely (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of the record and (iii) for any other sufficient reason. (***Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius: AIR 1954 SC 526; Board of Control for Cricket in India v. Netaji Cricket Club, (2005) 4 SCC 741***)

An application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an

error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason. An application for review would also be maintainable if there exists sufficient reason therefor. The words 'any other sufficient reason' must mean 'a reason sufficient on grounds, at least analogous to those specified in the rule'. (***Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius*: AIR 1954 SC 526; *Board of Control for Cricket in India v. Netaji Cricket Club*, (2005) 4 SCC 741).**

The power of review is not to be confused with the appellate power which may enable an appellate Court to correct all manner of errors committed by the subordinate Court (***Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* : (1979) 4 SCC 389; *Meera Bhanja v. Nirmala Kumari Choudhury*, (1995) 1 SCC 170; *Mudiki Bhimesh Nanda v. Tirupati Urban Development Authority*, 2005 (4) ALD 792 (DB)).**

The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement. The power of review can be exercised for correction of a mistake and not to substitute a view. The mere possibility of two views on the subject is not a ground for review. (***Lily Thomas v. Union of India* : (2000) 6 SCC 224 ; *Mudiki Bhimesh Nanda v. Tirupati Urban Development Authority*, 2005 (4) ALD 792 (DB)).**

Review literally, and even judicially, means re-examination or reconsideration. The basic philosophy inherent in it is the universal acceptance of human fallibility. Yet, in the realm of law, Courts lean strongly in favour of the finality of a decision-legally and properly made. Exceptions have been carved out to judicially correct accidental mistakes or errors which result in miscarriage of justice. (***P. Neelakanteswaramma vs Uppari Muthamma*: 1998(3) AnWR 132(DB); *Shivdeo v. State of Punjab*, AIR 1963 SC 1909).** An application for review would lie, *inter alia*, when the order suffers from an error apparent on the face of the record and permitting the

same to continue would lead to failure of justice. In the absence of any such error, the finality attached to the judgment/order cannot be disturbed. The review Court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law. It constitutes an exception to the general rule that, once a judgment is signed or pronounced, it should not be altered. Review is not an appeal in disguise. (***Inderchand Jain v. Motilal*, (2009) 14 SCC 663; *Rajendra Kumar v. Rambai*, (2007) 15 SCC 513; *Lily Thomas v. Union of India* : (2000) 6 SCC 224).**

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. In the exercise of the review jurisdiction, it is not permissible for an erroneous decision to be “reheard and corrected”. There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter alone can be corrected by the exercise of the review jurisdiction. (***Parsion Devi v. Sumitri Devi*, (1997) 8 SCC 715; *Mudiki Bhimesh Nanda v. Tirupati Urban Development Authority*, 2005 (4) ALD 792 (DB).**) 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 exercise of the power of review. A review petition, it must be remembered, has a limited purpose. (***Haridas Das v. Usha Rani Banik* : (2006) 4 SCC 78).**

A review lies only for correction of a patent error. (***Thungabhadra Industries v. Government of A.P.*, AIR 1964 SC 1372; *Mudiki Bhimesh Nanda v. Tirupati Urban Development Authority*, 2005 (4) ALD 792 ; *Delhi Administration v. Gurdip Singh Uban*, (2000) 7 SCC 296).** The error contemplated under the rule is not an error which is to be fished out and searched. It must be an error of inadvertence. (***Lily Thomas v. Union of India* : (2000) 6 SCC 224).** It must be an error which must strike one merely on looking at the record and not one which requires a long drawn process of reasoning on points where there may conceivably be two

opinions. (***Meera Bhanja's case (supra); Mudiki Bhimesh Nanda v. Tirupati Urban Development Authority, 2005 (4) ALD 792 (DB); Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale, AIR 1960 SC 137***). There can be no review unless the Court is satisfied that there exists a material error manifest on the face of the earlier order resulting in miscarriage of justice. (***Avtar Singh v. Union of India, 1980 Supp SCC 562 : AIR 1980 SC 2041; P. Neelakanteswaramma vs Uppari Muthamma: 1998(3) AnWR 132(DB)***).

An error, which necessitates review, should be something more than a mere error and it must be one which must be manifest on the face of the record. If the error is so apparent that, without further investigation or enquiry, only one conclusion can be drawn in favour of the petitioner, a review will lie. If the issue can be decided just by a perusal of the records, and if it is manifest, it can be set right by reviewing the order. If the judgment/order is vitiated by an apparent error or it is a palpable wrong, and if the error is self evident, review is permissible. (***S. Bagirathi Ammal v. Palani Roman Catholic Mission, (2009) 10 SCC 464***). A review proceeding cannot be equated with the original hearing of the case and the finality of the judgment will be reconsidered only where a glaring omission or patent mistake or like grave error has crept into by judicial fallibility. (***Northern India Caterers v. Lt. Governor Delhi, (1980) 2 SCC 167; Mudiki Bhimesh Nanda v. Tirupati Urban Development Authority, 2005 (4) ALD 792 (DB)***).

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. (***Northern India Caterers v. Lt. Governor Delhi, (1980) 2 SCC 167;; Sow Chandra Kante v. Sheikh Habib: (1975) 1 SCC 674***). A party is not entitled to seek review of a judgment 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. (***Northern India Caterers v. Lt. Governor Delhi, (1980) 2 SCC 167; Sajjan Singh v. State of Rajasthan***).

Review is not a rehearing of an original matter. The power of review cannot be confused with the appellate power which enables a superior court to correct all errors committed by a subordinate court. (***Kamlesh Verma v. Mayawati: (2013) 8 SCC 320***). The power of review must be exercised with extreme care, caution and circumspection and only in exceptional cases. (***Jain Studios Ltd. v. Shin Satellite Public Co. Ltd: (2006) 2 SCC 628; Kamlesh Verma v. Mayawati : (2013) 8 SCC 320***). 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. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for a patent error. (***Kamlesh Verma v. Mayawati: (2013) 8 SCC 320***).

V. REASONS SHOULD BE ASSIGNED BY THE COMMISSION FOR EXERCISING ITS POWER OF REVIEW:

As it is empowered, under Order 47 Rule 1 CPC, to allow a review only on the three grounds specified therein, namely (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the earlier Order was passed, (ii) mistake or error apparent on the face of the record and (iii) for any other sufficient reason, the Commission ought to have indicated, in its Order, which one of the three grounds was applicable to the case before it. In case the ground for review was that the earlier Order suffered from an error apparent on the face of the record, the Commission ought to have stated, at least in brief, why it was of the view that the earlier Order suffered from such an error. Failure of the Commission

to indicate why it was exercising its power of review is fatal, and necessitates the Order under review being set aside.

VI. POWER CONFERRED BY THE REGULATIONS ON THE COMMISSION TO REVIEW ITS EARLIER ORDER:

As reliance is placed on behalf of the Commission on the Regulations, it is necessary to take note of what the said Regulations stipulate regarding exercise of the review jurisdiction. In exercise of the power conferred by Section 181 of the Electricity Act, 2003 and sub section (2) of sub section 9 and Sub-Section (2) (a) of Section 54 of the Odisha Electricity Reforms Act, 1995, the Regulations were made. Regulations 70 thereof deals with review of the decision, directions and orders and provides that (1) the Commission may on its own motion, or on the application of any of the person or parties concerned, within 90 days of the making of any decision, direction or order, review such decision, directions or orders and pass such appropriate orders as the Commission thinks fit, (2) An application for such review shall be filed in the same manner as a petition under Chapter II of these Regulations, and (3) The application shall be accompanied by such fee, if any, as may be laid down by Commission. Regulations 76, which relates to saving of inherent powers of the Commission, stipulates that (1) nothing in these regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Commission, (2) nothing shall bar the Commission from adopting a procedure, which is at variance with any of the provisions of these Regulations, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing deems it necessary or expedient, and (3) nothing in these regulations shall, expressly or impliedly, bar the Commission to deal with any matter or exercise any power under the Central Act and the State Act for which no Regulations have been framed, and the

Commission may deal with such matters, powers and functions in a manner it thinks fit.

The power conferred on the Commission, by Regulation 70(1), to review its earlier decision, directions or orders and pass such appropriate orders as it thinks fit, does not absolve it of its obligations to assign reasons for doing so. As an appeal lies to this Tribunal under Section 111 of the Act, against the Order passed by the Commission, it is only if reasons are assigned in the Order would this Tribunal be able to decide whether or not the Order passed by the Commission is legal and valid. The power conferred on the Commission by Regulation 76(2), to adopt a procedure at variance with any of the provisions of the Regulations, is circumscribed by the obligation placed on it to record its satisfaction and assign reasons in writing of the special circumstances where such power should be exercised in a matter or class of matters, and why it deems it necessary or expedient to do so. No such reasons have been recorded by the Commission in the Order under appeal. Reliance placed on Regulations 70 and 76 of the Regulations is, therefore, misplaced.

VII. OTHER CONTENTIONS:

As the Order under appeal is being set aside only on the ground that it is bereft of reasons for the exercise by the Commission of its review jurisdiction, it would be wholly inappropriate for us to consider the submissions of Mr. Maninder Singh, Learned Senior Counsel, on merits or examine whether the applications filed by the Appellant before the Commission, in Case No. 21/2015 and Case No. 34/2018, are itself not maintainable; and whether the Commission lacks inherent jurisdiction to modify the terms and conditions specified in the PPA, as it is an agreement inter-parties which is binding on them. While we find it difficult to disagree with the submission of Mr. Maninder Singh, Learned Senior Counsel, that this Tribunal does not lack jurisdiction to examine the contention that both the earlier Orders passed by the Commission, in Case No. 21/2015 and

Case No. 34/2018, are wholly without jurisdiction and are null and void, such contentions can also be raised by GRIDCO before the Commission itself.

VIII. CONCLUSION:

Leaving it open to GRIDCO to do so, the Order under appeal is set aside on the sole ground that the Commission has not indicated the reasons why it had reviewed the earlier order. The Commission shall pass an Order afresh assigning reasons for reviewing its earlier Order, and thereafter act in accordance with law.

For the reasons aforesaid, the Appeal is allowed, and all the interlocutory applications therein are accordingly disposed of.

Pronounced in the open court on this 13th day of January, 2023.

(Sandesh Kumar Sharma)
Technical Member

(Justice Ramesh Ranganathan)
Chairperson

tpd/vt/dk