

**ORISSA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
UNIT-VIII, BHUBANESWAR - 751 012

Present : Shri B.K. Das, Chairperson
 Shri K.C. Badu, Member
 Shri B.K. Misra, Member

Case No.46 /2009

Kunja Bana Padhi	....	Petitioner
Vrs.		
Director (Engg.), OERC & SOUTHCO	....	Respondents

Case No.47/2009

Sukanta Kumar Jethi	....	Petitioner
Vrs.		
Director (Engg.), OERC & SOUTHCO	....	Respondents

Case No.48/2009

Jamini Kanta Choudhury	....	Petitioner
Vrs.		
Director (Engg.), OERC & SOUTHCO	....	Respondents

Case No.49/2009

Prasanna Kumar Singh	....	Petitioner
Vrs.		
Director (Engg.), OERC & SOUTHCO	....	Respondents

Case No.50/2009

Surendra Maharana	....	Petitioner
Vrs.		
Director (Engg.), OERC & SOUTHCO	....	Respondents

Case No.51/2009

Subrat Kumar Jena	....	Petitioner
Vrs.		
Director (Engg.), OERC & SOUTHCO	....	Respondents

Case No.52/2009

Jogesh Chandra Panda	....	Petitioner
Vrs.		
Director (Engg.), OERC & SOUTHCO	....	Respondents

Case No.53/2009

Ramanath Bisoyee	....	Petitioner
Vrs.		
Director (Engg.), OERC & SOUTHCO	....	Respondents

Case No.54/2009

Chandra Sekhar Swain	....	Petitioner
Vrs.		
Director (Engg.), OERC & SOUTHCO	....	Respondents

Case No.55/2009

Kama Sethi	....	Petitioner
Vrs.		
Director (Engg.), OERC & SOUTHCO	....	Respondents

Case No.56/2009

Kunja Bana Padhi	....	Petitioner
Vrs.		
Director (Engg.), OERC & SOUTHCO	....	Respondents

In the matter of: Review of Order in Case Nos. 28, 29 & 34 of 2008 dated 01.11.2008 in Suo Motu proceedings.

For the Petitioner:	Shri R.P.Mohapatra, the authorized Representative
For the Respondents:	Director (Engg.), OERC, Shri B.K. Nayak, Advocate for SOUTHCO Shri D.C. Sahoo, E.E. the authorized Representative of Respondent Nos.3 &4.

ORDER

Date: 02.08.2010

The above noted review cases are arising out of the common order dated 01.11.08 of the Commission passed in Suo-motu proceeding Case Nos. 28, 29 & 34 of 2008. The authorised representative of the petitioners of the all the above cases stated that the Commission has imposed a token penalty of Rs.100.00 on each of the petitioners, who were in-charge of power supply on the date of occurrence of accidents on the grounds of contravention of provisions of India Electricity Rules, 1956 and directed to deposit the same in the Govt. treasury under the receipt Head of Account “0043-Taxes & Duties on Electricity-102-Fees and Penalty” under

Indian Electricity Rules, 1956 without prejudice to the rights of the licence for imposition of any other disciplinary action that the license may decide to take for enforcement of safety provisions.

2. The authorized representative of the petitioner submitted the following:-

- (i) That the punishment for non-compliance of the directions by the appropriate Commission u/S 142 of the Electricity Act, 2003(herein after referred as 'the Act') is enforceable for prevention of any of the provisions of the Act, or Rules or Regulations made thereunder or any direction issued by this Commission.
- (ii) That neither in the Electricity Act, 2003 nor in any other Regulations framed thereunder the responsibility of the 'Engineer' as far as safety considerations are concerned, have been specified.
- (iii) That as per S. 177 of the said Act, the Central Electricity Authority is to specify suitable measures relating to safety of electricity supply under S.53 of the Act, 2003.
- (iv) That the Indian Electricity Rules, 1956 as amended in 2002 is the prevailing Rules specified the safety requirements in addition to others.
- (v) That SOUTHCO is the supplier as defined in Rule 2(a)(p) of the I.E. rules, 1956 and it is the responsibility of the supplier to ensure that the provisions of the I.E. Rules, 1956 are implemented.
- (vi) That SOUTHCO has not authorized any person for the purpose of any or all of the applicable Rules namely 36(2), 51(1)(a), 64(1)(a), 64(2)(4)(h) and (i) as provided in Rule 3(1).
- (vii) Rules 3(2) of the aforesaid Rules provides that no person shall be authorised under Sub-Rule-1 unless he is competent to perform the duties assigned to him and possesses either an appropriate certificate of competency of permit to work. The licensee-SOUTHCO has neither authorised nor posted such personnel.
- (viii) The supplier-SOUTHCO has not appointed the Safety Officer for observance of safety measures in construction operation and maintenance of the distribution lines as provided u/R 3(7) of the said Rules, 1956.

- (ix) The Commission has stated that the employees of SOUTHCO i.e., respondents in Case Nos. 28, 29, & 34 of 2008 have contravened the provisions of the safety Rules, I. E. Rules, 1956 and are liable for punishment.

He submitted that from the above violation of provisions of I.E. Rules, 1956 has been done by the licensee- SOUTHCO, who is liable for penalty and not the individual officials and who have not been authorized by it. But the Commission has completely exonerated the licensee- SOUTHCO for its negligence. There is apparent error in the face of the record which is a ground for review.

3. He also further stated that there are other sufficient reasons to review of the aforesaid orders of the Commission, which are given below:

- (i) S.2 (49) of the Act defines a 'person' shall include any company or Body corporate or Association or Body of Individuals whether incorporated or not or artificial juridical person. The definition of a person used in S. 142 of the Act, is in reference to not an individual but to the licensee-SOUTHCO or nay other body corporate as defined in S. 2(49) of the said Act.
- (ii) SOUTHCO has conducted according to the statement of the Chief Executive Officer that they have conducted training about the safety rules in the month of Jan, Feb, April & Aug, 2005 at different Sub-Division and Division level without specifying when the training were conducted.
- (iii) That as per report of the Chief Electrical Inspector (T&D) the number of human & animals electrocuted for the last five years i.e., 2003-04 to 2007-08 is 210 under the area of supply by SOUTHCO. This clearly brings out the fact that SOUTHCO is solely responsible for such huge no. of fatal accidents as it has not taken any steps nor has authorised any official as per the I.E. Rules, 1956. Therefore liability for penalty for violation of I.E. Rules, 1956 by SOUTHCO only.

4. In support of his submissions he cited the judgment in FA No. 39/71 of the Hon'ble High Court of Madhya Pradesh, reported in AIR 1976 MP 38, wherein the Hon'ble Justice G.P. Singh and M.L. Malik, JJ had held that the MP Electricity Board, who

are the suppliers of power, being liable for damages and no individual officer has been proceeded against. The above facts clearly establish that the licensee-SOUTHCO is negligent in performing its duty properly and is therefore responsible for accidents and not the petitioners herein above. He prayed to acquit the petitioners from the offences and penalize the licensee-SOUTHCO for its negligent work.

5. Shri Nayak, learned Counsel for SOUTHCO - the Respondent has stated that the petitioners have filed these review petitions with the prayer to impose the penalty on the licensee- SOUTHCO only and not on its employees (Petitioners) who were in charge of power supply on the day of the accidents in that concerned area of SOUTHCO as they have not been duly authorized in accordance with the Act, I.E. Rules, 1956 and Regulations made thereunder. It is revealed from the observation of the Commission at para 8 of its order that it was due to the individual negligence of the concerned officers of SOUTHCO that the accidents occurred.
6. Shri Nayak further stated that review of the order can be made only when there is an error apparent on the face of records. In the present cases, the Commission taking note of submission of all the parties and after analyzing the same delivered the judgment holding in para 8 of its Order that it is the negligence of the concerned officers which caused the accidents. He submitted that petitioner's submission regarding the interpretation of the word 'person' used in the S.142 is not correct. The word 'person' includes company, body corporate or association of person has been defined under S.2(49) of the Electricity Act, 2003 as '*Person shall include any company or body corporate or association or body of individuals, whether incorporated or not artificial juridical person.*' So an individual can also be a 'person' under those provisions and can come under the ambit and scope of S.142 of Act. He also further submitted that it is the responsibility of the officers who are in-charge of the supply system in their area to maintain the supply system properly. Non removal of the defect in the supply system is the personal responsibility of the concerned staffs. Taking all the above facts into consideration the Commission have imposed penalty of Rs.100/-on the concerned officers which may be recovered from their salary and to deposit the same in the Govt. account. He also stated that if the petitioners are aggrieved by the aforesaid Order of the Commission they can challenge the said Order under S.111 of the Act before the Hon'ble ATE.

So, he prayed that the Commission may dismiss the review petitions of the petitioners as there has been no error apparent on the face of the Order.

7. On behalf of Respondent No.3, Shri T.K. Mishra, CEI (T&D), Dept. of Energy, GoO-Respondent No.4, has stated that on the basis of the directions given under the Act and I.E. Rules, 1956 they have discharged their duties and made enquiry at the spot of the accidents and collected the documentary and oral evidence. The enquiry reports were submitted to the higher authorities as well as to the licensee. The Commission has passed the orders after hearing all the parties concerned and also taking into consideration the enquiry reports. Shri Mishra also has stated that inspection of the electrical installations would be carried out after deposit of the inspection fees by the licensee as per Rule 46(2) (a) of the I.E. Rules, 1956. The licensee – SOUTHCO has not deposited the periodical inspection fees within the period of limitation before the authority and on the other hand SOUTHCO has gone for a litigation before the Civil Judge, Sr. Division, Bhubaneswar in Case No. 252 of 2007 against the Govt., challenging the Notification issued by it. We also filed a complaint before the SDJM, Puri under S. 146 of the Act as per direction of the Commission in this regards. The said proceeding is under subjudice.
8. The Commission heard the parties, perused the case records. The Commission is of the view that the contention of the petitioner that the field Engineers of the licensee are not authorized under Rule 3 of the I.E. Rules, 1956 are not acceptable as all. The designated Engineers and Technical Staff in the field are supposed to have the requisite qualifications and practical experiences. By virtue of their appointments as field staff and engineer, there is consequential authorization by the licensee. Both the licensee and the field staff are aware of their functions and duties particularly in a sensitive field like electricity. Field officers/employees in charge of operation and maintenance of distribution network are considered/deemed to be competent and qualified personnel. In the instant case, employees of SOUTHCO are ware of their duties and functions and they have been made liable for their negligence in duty. The onus of their liabilities can not be shifted to their employer SOUTHCO for their personnel and individual negligence. A person is liable for his own action. The field staff of the licensee in-charge of operation & maintenance distribution network are supposed to be aware not only about the duties and functions, they should also discharge their duties and handle the responsibilities in proper and careful manner.

They cannot abdicate their duties and cast it on their employer for their own negligence. This result will also follow on the principle of *res ipsa loquitur* i.e. “things speak for itself”. In all these cases i.e. Case Nos. 28, 29 & 34 of 2008, our order of 01.11.2008 is clear and specific. It is for the petitioners to demonstrate that there was no negligence or carelessness on their part when particularly there was a live broken LT conductor with which the victim came into contact. The fact that the 100 KVA 11/0.4 kV sub-station at Baghdadi was in a dismal condition with its AB switch not functioning, absence of earthing, use of aluminium conductors instead of LT fuse wire tells its own story. That the field engineers did not rectify these deficiencies and allowed these things to happen in gross violation of the I.E. Rules raises the inference of negligence against the petitioners. It is gross negligence, if the petitioners allowed such a state of affairs and did not maintain the sub-station and lines in a safe and harmless state. Electricity is a dangerous commodity and the standards of safety required are of a very high standard. To take the plea that their Employer SOUTHCO is responsible for the use of Aluminium conductors for LT fuse wires is a travesty of the principle of accountability and responsibility by persons deployed in the field and in charge of equipments and machinery used to feed and supply electricity to consumers.

9. The report of the Electrical Inspector on the accident is crucial. The Commission has heard all the parties and has fixed responsibility on the individual employees of SOUTHCO and imposed a token penalty of Rs.100/- as symbol of caution and deterrence for their negligence. As the petitioners have not produced any evidence whatsoever to place the facts showing that all necessary precautions were taken and there were no negligence on their part, it must be held that the accidents were caused because of the negligence of the petitioners. This result will also follow on the principle of *res ipsa loquitur*.
10. A review can be allowed only under the following established principle of law :
 - i. There has to be discovery of new or important matter or evidence.
or
 - ii. Mistake or error on the face of the record.
or
 - iii. Any other sufficient reason.

In the instant case we do not find any ground as stated above for review of the order. The underlying object of the provision for review is neither to enable to write a second judgment nor to give second inning's to the party who has lost the case. Therefore, a party seeking review must adduce sufficient relevant reasons for review. The error, if any, should be apparent on the face of record, not to be detected by process of reasoning. A review petition has a limited purpose and cannot be allowed to be an appeal in disguise.

11. The other reasons stated by the petitioner for review cannot be considered as sufficient ground for review. The parties had got fair opportunity of hearing and the Commission considered the materials issues according to the statutory provisions.
12. In view of the above, the present petitions for review stands disallowed. Accordingly, the cases are disposed of.

Sd/-
(B.K. Misra)
Member

Sd/-
(K.C. Badu)
Member

Sd/-
(B.K. Das)
Chairperson