

**ODISHA ELECTRICITY REGULATORY COMMISSION  
BIDYUT NIYAMAK BHAWAN  
PLOT NO.-4, CHUNOKOLI, SHAILASHREE VIHAR  
BHUBANESWAR - 751 021**

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**Present:**        **Shri U. N. Behera, Chairperson**  
                      **Shri A. K. Das, Member**  
                      **Shri S. K. Parhi, Member**

**Case No. 02/2017**

G.M. (Comm.), WESCO Utility & another	.....	Petitioners
Vrs.		
M/s. Sita Cement Ltd.	.....	Respondent

**In the matter of:**    **An application for Review Petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 70(1) of the OERC (Conduct of Business) Regulations, 2004 along with Or. 47 R-1(c) & S.114 of the Civil Procedure Code, 1908 for review of Order dated 02.12.2016 of the Commission passed in Case No. 34 of 2016.**

**For Petitioner:**        **Shri Amaresh Chandra Bal, A.M. (Law), WESCO Utility.**

**For Respondent:**     **Shri Akshya Kumar Sahani, Authorised representative.**

**ORDER**

**Date of hearing: 09.05.2017**

**Date of order: 14.09.2017**

- In the present case the petitioner WESCO Utility has sought to review the order of the Commission dated 02.12.2016 in Case No. 34 of 2016 filed by M/s. Sita Cement wherein the Commission had directed the petitioner to carry out the order of the Ombudsman II.
2. The fact of the case is that the M/s. Sita Cement had applied for enhancement of its load from 300 KVA to 450KVA vide its letter dated 07.10.2013 and the petitioner in the present case M/s. WESCO Utility had allowed the same with the condition of signing of an agreement which the M/s. Sita Cement failed to carry out. But M/s. Sita Cement went on over drawing power till a penalty of Rs.44,32,747.62 was imposed by the licensee under Section 126 of the Electricity Act, 2003.
  3. Being aggrieved with the penalty, M/s. Sita Cement appealed before the GRF vide Case No. 13/2014 wherein the GRF in their order dated 30.04.2014 directed M/s. Sita Cement to approach the Appellate Authority under section 127 of EA, 2003. Not being satisfied with the order of GRF, M/s. Sita Cement appealed before the Ombudsman II vide Case No.OM(II)(W)-10 of 2014 which also directed M/s. Sita Cement to approach the Appellate Authority by depositing 50% of the assessed amount. M/s. Sita Cement being

aggrieved by the order of the Ombudsman II approached the Hon'ble High Court vide WP(C) No.19920/2014 wherein the Hon'ble Court issued a stay vide interim order dated 10.11.2014 on the assessment amount of WESCO Utility.

4. In the meantime, the request of M/s. Sita Cement to revalidate the agreement period for enhancement of CD was rejected by WESCO Utility vide its order dated 19.06.2014 stating that there was an outstanding arrear on account of overdrawal penalty with M/s. Sita Cement which must be cleared before revalidation as per Regulation 73(3) of OERC (Conditions of Supply) Code, 2004. On rejection of the request for enhancement of CD M/s. Sita Cement approached the GRF vide Case No. 2/2015 wherein the GRF refused to intervene since the final assessed amount vide order dated 11.03.2014 is under subjudice. Being aggrieved, M/s. Sita Cement approached Ombudsman II again which in its order directed the present petitioner WESCO Utility to enhance the CD of the opposite party with effect from 12.05.2014, the date of application of revalidation.
5. The petitioner WESCO Utility being aggrieved by the order of the Ombudsman II approached the Hon'ble High Court vide WP(C) No. 11838 of 2016 and when the matter was subjudice before the said Hon'ble Court, M/s. Sita Cement approached the Commission under Section 142 of the EA, 2003 to carry out the order of the Ombudsman II and the Commission vide their order dated 02.12.2016 in Case No. 34/2016 directed the petitioner to carry out the order of the Ombudsman II which has not been stayed by the Hon'ble High Court.
6. In the meantime on 11.05.2017 in Misc. Case No. 2190/2015 Hon'ble Court vacated the earlier interim stay order passed by them on 10.11.2014. In view of this now the Petitioner prays the Commission to review/recall the order passed by the Commission in Case No. 34/2016 dated 02.12.2016 on the basis of apparent error in the order. The Petitioner states that the very order of Ombudsman which is directed to be complied by the WESCO Utility is under challenge vide WP(C) No. 11838/2016 before Hon'ble High Court. Any direction to comply this order would render the entire writ petition infructuous.
7. Heard the parties.

As per Section 94(1) (f) of the Electricity Act, 2003, this Commission has the same power as are vested with the Civil Court under the Code of Civil Procedure, 1908 in respect of reviewing its decisions, directions and orders among others.

*As per Order 47 Rule 1 of the Civil Procedure Code, review of an order can be made on the following grounds:*

- (a) *Error apparent on the face of the record;*
- (b) *New and important matter or evidence which is relevant for the purpose was discovered which could not be produced after exercise of due diligence or if there appears to be some mistake;*
- (c) *Any other sufficient reason.*
8. When the Commission passed the order in Case No. 34/2016 dated 02.12.2016 which is sought to be reviewed / recalled there was no stay by Hon'ble High Court on the orders of Ombudsman. Therefore, the direction of the Commission to comply with the order of the Ombudsman cannot be treated as error in the judgement. That situation still prevails.
9. In view of the above, the Commission does not feel it proper to review the said order dated 02.12.2016.
10. Accordingly, the review petition is rejected and the case is disposed of.

Sd/-  
**(S. K. Parhi)**  
**Member**

Sd/-  
**(A. K. Das)**  
**Member**

Sd/-  
**(U. N. Behera)**  
**Chairperson**