

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

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

Case No. 12/2018

NESCO Utility Petitioner
Vrs.	
M/s. Jindal Stainless Limited Respondent

In the matter of: An application under S.94 (1) (f) of the Electricity Act, 2003 read with Regulation 70 (1) of the OERC (Conduct of Business) Regulations, 2004 for review of Order dated 26.02.2018 of the Commission passed in Case Nos. 12 & 14 of 2015.

AND

Case No. 26/2018

M/s. Jindal Stainless Limited Petitioner
Vrs.	
NESCO Utility & Others Respondents

In the matter of: An application under S. 142 & 146 of the Electricity Act, 2003 for non-compliance of the directions of the Commission passed in Case Nos. 12 & 14 of 2015.

**For Petitioner: Shri B. K. Sahoo, AO, NESCO Utility,
 Ms. Malancha Ghosh, AGM (RA), NESCO Utility**

**For Respondent: Shri B. K. Pattnaik, Advocate
 Shri R. P. Panigrahi & Shri R. K. Sharma of M/s. Jindal Stainless Limited.**

ORDER

Date of hearing: 30.04.2018

Date of order:09.04.2019

The representative of M/s. NESCO Utility has submitted that they have filed the above case under Section 94(1)(f) read with Regulation 70(1) of the OERC Conduct of Business regulations, 2004 for review of Order dated 26.02.2018 passed in Case Nos. 12 & 14 of 2015 by the Commission. The Review petition has been filed by NESCO Utility for

reconsideration of certain facts for the interest of justice as well as to maintain proper discipline in the company. In the said order of the Commission dated 26.02.2018 at para 16, there is an error apparent on the face of the records as because though a notice was issued earlier on 20.12.2012 but the Commission in their dated 26.02.2018 has observed as follows:

‘However, in accordance with the regulations, the final notice to change the category appears to have been issued to the Respondent-consumer by the licensee much later on 30.04.2015 and the agreement has been signed in the new agreed category w.e.f.01.08.2015.

The above observation of the Commission needs to be rectified. The representative of NESCO Utility further submitted that Reg.82 of the OERC Distribution (Conditions of Supply) Code, 2004 speaks the manner in which category/classification of an existing consumer can be altered if the agreement has changed or the consumption of power has exceeded the limit of category or any order of reduction/ enhancement of contract demand has been made or a notice has been issued by the supplier-petitioner. Serving notice is a pre-condition for changing of category of an existing consumer, if the drawl pattern is not in concurrence with the terms of the agreement. However, nowhere in the regulation there is a mention that final notice to change the category is to be only honored, disregarding the first notice .

2. In addition to that NESCO utility in the above review petition has stated that the statement under Para No. 16 of the said order dated 26.02.2018 is not correct. On receiving an application for new power supply, the category of the consumer is changed to an appropriate category as per the provisions of regulation laid down under Chapter VIII of the OERC Distribution (Condition of Supply) Code, 2004, basing on the load details and purpose of availing power Supply furnished by the consumer in the application. If the engineer of the licensee subsequently finds that the consumer needs to be reclassified under a separate category as per its consumption or drawal pattern, it should be done as per the procedure laid down under Regulation 82 of OERC Distribution (Condition of Supply) Code, 2004.

3. The representative of NESCO Utility further submitted that the bills of M/s. JSL from April, 2012 were being raised under Large Industry category and show cause notice was issued to the consumer vide Lr. No. 7239 dated 21.11.2012 to explain its drawal pattern. Notice to execute agreement under 'Large Industry Category' as per the procedure laid down under Regulation 82 of OERC Distribution (Condition of Supply) Code, 2004 was served to the consumer vide Notice No. 7736 (4) dated 20.12.2012 of Executive Engineer, JRED, Jajpur Road. As per the provisions of the Regulation 82 of the Supply Code, the Distribution Utility is empowered to reclassify the consumer under 'Large Industry' category serving notice to execute agreement which had been done by the Utility. Further, the order of Ombudsman-II in CR Case No. 72/2012 and the fact finding team report it is revealed that the transaction or power supply drawn by M/s. JSL during the said period from 01.07.2012 to 31.07.2015 is contradicting to the provisions of Regulation 80 (15) of the Supply Code.
4. The Counsel of M/s. JSL submitted that all the correspondences including notice dated 20.12.2012 has been duly considered by the Ombudsman-II vide its order dated 22.11.2013 passed in C.R. Case No. 72 of 2012 and so also by the Commission in their order dated 20.02.2015 passed in Case Nos. 92 of 2013 and Case No. 03 of 2014 and further in order dated 26.02.2018 in Case Nos. 12 & 14 of 2015. Now the present application for review amounts to challenge the order of the Ombudsman-II passed in C.R. Case No. 72 of 2012 so also the orders of the Commission passed in Case Nos. 92 of 2013 and Case No. 03 of 2014 and in Case Nos. 12 & 14 of 2015 and rehearing of the above cases is not permissible in law inasmuch as the said orders have reached their finality having not been challenged by NESCO Utility in any forum. There has been no error in the order of the Commission which is passed considering all the evidence available in the case records including the notice dated 20.12.2012 and Regulation 82 of the OERC Distribution (Conditions of Supply) Code, 2004. The law is well settled that an agreement shall continue to be binding on the parties after the expiry of the period till it is renewed or a new agreement is executed by the parties in dispute. Thereby, the Commission considering all the factors has passed the above order in Case Nos. 12 & 14 of 2015 holding that the transaction for the period from 01.07.2012 to 31.07.2015 as "Emergency Supply to CGP" under Regulation 80(15) of the Supply Code, 2004 which

was existing category as on 30.06.2012. Therefore, the review petition of NESCO Utility in Case No. 12 of 2018 is liable to be dismissed as it has no merit for consideration by the Commission.

5. The learned Counsel of M/s. JSL submitted that it has filed another application under Sections 142 & 146 of the Electricity Act, 2003 which is registered as Case No. 26 of 2018 for non-compliance of the directions of the Commission passed in Case Nos. 12 & 14 of 2015 and apprehending disconnection of power supply to its unit, as NESCO Utility has issued Demand –cum- Disconnection Notice No.1766 dated 16.04.2018 to it to pay an amount of Rs.50,150,790.00 including DPS within the period of 15 days failing which the power supply to the unit shall be disconnected without any further notice . M/s. JSL in the above petition has prayed for an interim stay of the operation of the Demand-cum-Disconnection Notice dated 16.04.2018 of NESCO Utility till disposal of the Review petition in Case No. 12 of 2018.
6. The Counsel of M/s.JSL also submitted that specifically NESCO Utility has not followed Regulation 82 of the OERC Supply Code, 2004 for reclassification of tariff category and also the directions of the Commission on account of transaction for the period from 01.07.2012 to 31.07.2015. NESCO Utility should consider M/s. JSL in the category of “Emergency Supply to CGP” under Regulation 80(15) of the said Code which was existing as on 30.06.3012 and revise the bill accordingly for the period from 01.07.2012 to 31.07.2015 and also adjust the amount already deposited in the current bills. Without complying the said directions of the Commission, NESCO Utility has filed an application for review of the above order passed in Case Nos. 12 & 14 of 2015 which is registered as Case No. 12 of 2018. In view of the above, the Commission may hear both the Review petition in Case No. 12 of 2018 filed by NESCO Utility and the present petition in Case No. 26 of 2018 of M/s.JSL filed under Section 142 of the Electricity Act, 2003 which are arising out of the Commission’s Order dated 26.02.2018 passed in Case Nos. 12 & 14 of 2015.
7. The representative of M/s. JSL submitted that law is well settled that an agreement shall continue to be binding on the parties after the expiry of the period till a new agreement is signed. Thereby, the Commission considering all the factors has been pleased to hold that

the transaction for the period from 01.07.2012 to 31.07.2015 should fall in category of "Emergency Supply to CGP" under Regulation 80(15) of the Supply Code.

8. We heard the matters in detail. The Commission clubbed both the cases (Case Nos. 12/2018 and 26/2018) together and heard analogously as both the cases were arising out of the Commission's Order passed in Case Nos. 12 & 14 of 2015. The main thrust of contention of NESCO Utility for review/reconsideration of the said order is that the notice dated 20.12.2012 issued by NESCO Utility to the consumer to execute agreement under 'Large Industry category' has not been considered while disposing of the order. The Commission vide their order dated 26.2.2018 has clearly taken note of several communications of NESCO Utility to M/s JSL for executing agreement under large industry category. Therefore, the alleged notice dated 20.12.2012 was duly considered by the Commission along with the provisions of law as enumerated under the Electricity Act, 2003 as well as the OERC Distribution (Conditions of Supply) Code, 2004 while deciding the matter. In view of the facts stated above there is no mistake or error on the face of the record, or of any discovery of new and important matter of evidence.
9. The argument of NESCO Utility amounts to re-hearing of the matter which is not permissible under the scope of the present application.
10. We further opine that for review under Order 47 Rule 1 of CPC, a judgment *inter alia* needs to have a mistake or an error apparent on the face of the record. 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 record justifying the court to exercise its power to review under Order 47 Rule 1 of CPC. In exercise of jurisdiction under Order 47 Rule 1 of CPC, it is not permissible for an erroneous decision to be reheard and corrected. There is clear distinction between an "*erroneous decision*" and "*an error apparent on the face of record*". While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise". The Hon'ble Apex Court in case of **Parsion Devi Vrs. Sumitri Devi** has observed as follows:-

"Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be dictated 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 under Order 47 Rule 1 CPC. In exercise of jurisdiction under Order 47 Rule 1 CPC 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 only can be corrected by exercise of review jurisdiction. A review petition has a limited purpose and cannot be allowed to be 'an appeal in disguise'."

11. Therefore, we do not observe/find any fresh evidence to agree with the petitioner on its application for review of the earlier order passed by the Commission. We find the petition, for review of the order dated 26.02.2018 passed in Case Nos. 12 and 14 of 2015, is devoid of any merit. As the cases have been decided after full consideration of the arguments made by the parties, the present review petition cannot be accommodated even in garb of doing justice or substantial justice to engage the Commission again to decide on the controversy already decided.
12. With the above observations the cases are disposed of.

Sd/-
(S. K. Parhi)
Member

Sd/-
(A. K. Das)
Member

Sd/-
(U. N. Behera)
Chairperson