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had earlier been disposed of by this Commission vide order dated 05.10.2021. Challenging the order dated 28.10.2022, the Respondent No.1-M/s. Vedanta Ltd. preferred Appeal No.437 of 2022 before the Hon'ble APTEL and vide order dated 13.01.2023 Hon'ble APTEL have been pleased to allow the appeal with a direction to this Commission to pass an order afresh assigning reasons for reviewing the order dated 05.10.2021 passed in Case No.34 of 2018.

3. The Hon'ble APTEL vide paragraph V of the order dated 13.01.2023 have observed as below:

“V. 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 mater 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.”

4. It may also be mentioned here that the learned Senior Counsel appearing for the Petitioner-GRIDCO before the Hon'ble APTEL submitted, interalia, that the Applications filed by the respondent No.1-Vedanta Ltd. before this Commission in Case No.21/2015 and Case No.34 of 2018 were not maintainable and this Commission lacked jurisdiction to modify the terms and conditions specified in PPA as it is an agreement inter parties which is binding on them. In that context, the Hon'ble APTEL vide Paragraph VII of the order observed as follows:

“VII. 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. Mahinder 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.”

5. Since the Hon’ble Appellate Tribunal have been pleased to set aside the order dated 28.10.2022 passed by this Commission in Case No.129 of 2021 on the sole ground that the reasons for review have not been assigned and the matter having been remitted with a direction to this Commission for passing an order afresh assigning the reasons for reviewing its earlier order i.e. the order dated 05.10.2021 passed in Case No.34 of 2018, the Commission does not feel it necessary to burden this order with a total reiteration of the submissions/arguments advanced by the rival sides earlier in course of the hearing of the Case No.129 of 2021, in so far as the undisputed factual matrix and the facts which are the matter of record, are concerned.
6. A reference may be made to the paragraph IV of the order dated 13.01.2023 of Hon’ble APTEL vide which the settled principles of law with regard to Review have been stated as follows:

“IV. 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 necessitates on account of some mistake or for any other sufficient reason. An application for review would also be maintainable if there exists sufficient reason therefore. 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 Poulouse Athanasius: AIR 1954 SC 526; Boad 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 (AribamTuleshwar Sharma v. AribamPishakSharma : (1979) 4 SCC 389; Meera Bhanja v. Nirmala

Kumari Choudhury, (1995) 1 SCC 170; MudikiBhimesh 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 ; MudikiBhimesh 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 UppariMuthamma: 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; MudikiBhimesh 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; MudikiBhimesh 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); MudikiBhimesh Nanda v. Tirupati Urban Development Authority, 2005 (4) ALD 792 (DB)); Satyanarayan Laxminarayan Hegde v. Mallikarjun BhavanappaTirumale, 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 UppariMuthamma: 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; MudikiBhimesh 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)).”

7. Needless to mention that the relationship between M/s. Vedanta and GRIDCO is contractual in nature vide the Power Purchase Agreement (for short “PPA”), that was executed on 19.12.2012 and approved by this Commission on 12.06.2013. Respondent No.1-M/s. Vedanta filed an application registered as Case No.21 of 2015 before this Commission seeking for a declaration of all the four units of its thermal power plants as CGP with a solemn affirmation/assurance that notwithstanding such conversion of the units from IPP to CGP, it shall comply with the requirement of supplying power to GRIDCO under the terms of the PPA dated 19.12.2012. This Commission vide the order dated 27.01.2016 passed in the Case No.21 of 2015 while allowing the conversion of Unit Nos.I, III & IV to CGP on the basis of the assurance given by M/s. Vedanta Ltd., directed both the parties to bring about necessary changes in the PPA and place the same before this Commission for approval. In so far as the Unit No.II was concerned, the Commission vide the said order directed that the same will continue to remain IPP and connected to the State Grid. The said order of the Commission having not been challenged by either side has attained finality.
8. Respondent No.1-Vedanta Ltd. however, subsequently came up with another application registered as Case No.34 of 2018 seeking for a declaration of the Unit No.II as CGP to enable the supply of power there-from to its Smelter I and Smelter II on the ground, inter-alia, that both those Smelter Units would be operated at optimum capacity in the interest of public as it would bolster economic development of the State. This Commission disposed of the said case vide order dated 05.10.2021

allowing the unit II of M/s. Vedanta Ltd. to be normally operated as CGP, of course, with certain conditions stipulated therein. For the sake of ready reference, the operative portion of the said order is reproduced hereunder:

“30. Accordingly, considering the submission of parties and basing on the above analysis we allow GRIDCO to operate its PPA without losing its entitlement under the same.

- (a) The Unit-II of M/s. Vedanta shall normally operate as CGP. If in any quarter, GRIDCO requires power from M/s. Vedanta for State consumption they can avail the same giving three months prior notice to M/s. Vedanta 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 charge and other charges.*
- (b) During IPP mode of operation, Quantum of power supply to GRIDCO towards State entitlement should be 25% (at full cost) and 7% / 5% (at variable cost) of total energy sent out from the power station (4 x 600 MW) as per the PPA in force. The Unit-II must remain connected to STU as State dedicated unit and accordingly supply to GRIDCO must be 25%+7%/5% of total energy sent out from the power station or total ex-bus generation from Unit-II whichever is higher. Such quantum of power supply should not be disturbed at any point of time.*
- (c) During IPP mode of operation, the coal used for generating power for State entitlement shall be linkage coal / captive mines allocated to the Petitioner for State use.*
- (d) If M/s. Vedanta fails to supply power after requisition by GRIDCO within the stipulated period, M/s. Vedanta will compensate GRIDCO by paying the differential cost incurred by GRIDCO for such drawal at margin over and above the cost of normal power purchase from M/s. Vedanta IPP Unit-II.*
- (e) If at any time it is found that M/s. Vedanta has failed to supply IPP power after requisition by GRIDCO and is trading the same, M/s. Vedanta will have to pay, in compensation, two times the differential cost incurred by GRIDCO at margin over and above the IPP power cost from M/s. Vedanta.*
- (f) In order to prevent dislocation in the current supply of power, the Unit-II will continue as IPP for the current quarter. GRIDCO has to exercise its option to avail IPP power from M/s. Vedanta for the next quarter within one month of this order failing which the IPP Unit –II of M/s. Vedanta shall operate as CGP with effect from the 1st of January, 2022. Thereafter, as stated in sub-para (a) above, GRIDCO will have to give three months prior notice for availing power in any quarter.*

(g) *The option of GRIDCO to avail IPP power shall be prudently exercised in order to minimise the total power purchase cost and shall be scrutinised by the Commission at any time.”*

9. While passing the order aforesaid, this Commission made an analysis regarding the State availability of power from different sources excluding drawal from M/s. Vedanta Ltd. and another IPP (JITPL) vide paragraphs 26 to 28 and recorded its view vide paragraph 29 of the order that it would be prudent if GRIDCO has flexibility in operating its PPA depending upon its power requirement. Paragraphs 26 to 29 of the order dated 05.10.2021 may be extracted here below:

“26. Let us analyse commercial and economic impact if there is no drawal from IPP of M/s. Vedanta as prayed for by them. It is to be mentioned here that there has been no drawal from another IPP M/s. JITPL for last several years. Therefore, we analyse the state availability of power from different sources excluding drawal from M/s. Vedanta and another IPP (JITPL) in the table below:

Generating Stations	Capacity MW	Odisha Share %	Energy available MU (Considering normative availability of 85% for thermal stations & 3.59% CTU loss)	Energy available excluding Vedanta & JITPL (MU)	DISCOMs drawal based on Merit order (MU) excluding Vedanta & JITPL
State Hydro	2,088	100%	5,881.74	5,881.74	5,881.74
IBTPS Stage-I	420	100%	2,830.22	2,830.22	2,830.22
IBTPS Stage-II	1,320	75%	6,910.82	6,910.82	6,910.82
State IPPs					
M/s. Sterlite Energy	2,400	30%	5,009.97		
M/s. JITPL	1,200	12%	1,005.21		
M/s. GMR	1,050	25%	2,155.78	2,155.78	2,155.78
Total IPP			8,170.96	2,155.78	2,155.78
Renewable					
Small Hydro	109		458.35	458.35	458.35
Biomass Energy	20		80.00	80.00	80.00
Wind	350		685.00	685.00	685.00
Solar Energy	995		1,479.00	1,479.00	1,479.00
Total Renewable			2,702.35	2,702.35	2,702.35
State Total			26,496.09	20,480.91	20,480.91
Central Hydro					-
Chukha	270	15.19%	255.43	255.43	255.43
Tala	1,020	4.25%	124.69	124.69	124.69
Mangdechhu HEP	720	10.97%	342.26	342.26	342.26
Teesta	510	20.59%	504.57	504.57	504.57
Total Central Hydro			1,226.94	1,226.94	1,226.94
Central Thermal					-
TSTPS - I	1,000	32.34%	2,157.92	2,157.92	
TSTPS - II	2,000	10.00%	1,346.00	1,346.00	750.00
FSTPS III	500	17.15%	577.10	577.10	
KHSTPS - II	1,500	2.62%	264.49	264.49	
DSTPP Stage -I	800	58.82%	3,166.88	3,166.88	3,166.88
DSTPP Stage -II	800	58.82%	3,166.88	3,166.88	3,166.88
Total Central Thermal			10,679.27	10,679.27	7,083.76
Total			38,402.29	32,387.12	28,791.61

27. From the above table, we find that the State availability of power is around 38,402.29 MU whereas the State requires 28791.61 MU to meet its demand as per approved ARR of GRIDCO for FY 2021-22. If GRIDCO does not draw power from M/s. Vedanta the availability shall be 32,387.12 MU which is 3500 MU more than the State requirement. GRIDCO is required to draw the State requirement as per the merit order principle. It is observed that even after surrendering the power from M/s. Vedanta IPP, GRIDCO requires no drawal of power from TSTPS-I, FSTPS-III, KhSTPS-II and partial drawal of power of 750MU only out of GRIDCO share of 1346 MU from TSTPS-II for state consumption. In addition to that GRIDCO may not require this partial drawal also from TSTPS-II since another 2300MU shall be available from IBTPS stage-II when 100% of its generation will be available to GRIDCO after 01.04.2023.

28. Even if GRIDCO does not draw power from the above mentioned power stations at margin, still GRIDCO has to pay full fixed cost to the NTPC stations as per existing PPAs. In future, if GRIDCO needs more power than the present estimated State requirement, then it may draw the unscheduled power from those power stations, which are presently beyond the merit order, i.e., TSTPS-II (partially), KHSTPS-II, FSTPS-III. For these central stations, fixed costs are to be paid irrespective of drawal from them. However, if GRIDCO surrenders M/s Vedanta power, they won't have to pay the fixed cost of Rs. 399.42 crores at 85% of availability. We are giving a comparative table to show the benefit of drawing power from these power stations without drawing power from M/s Vedanta.

Power Station	Availability in MU	Incremental Drawal in MU beyond the present drawl	Variable Charge in paise/unit	Total Cost of drawing incremental power (Rs. Cr)	Vedanta Cost (Rs. Cr) including fixed cost for same power per Annum	Saving (Rs. Cr) for not drawing from M/s Vedanta per Annum
TSTPS-II	1346.00	596.00	205.49	122.47	617.93 (399.42 +143.75X1.52)	277.70
KHSTPS-II	264.99	264.49	220.59	58.34		
FSTPS-III	577.10	577.10	276.22	159.41		
Total	2188.09	1437.59		340.22		

In the extreme situation, if GRIDCO purchases further 1400 MU from the market beyond the availability of above power at a price of 350 paise per unit, GRIDCO would still save Rs.1.15 Crores (277.70-(3.50X1400-1.525X1400)).

29. In addition, GRIDCO has tied up with cheaper renewable power sources to procure power in near future. Therefore, if GRIDCO has flexibility to surrender its entitlement as proposed by M/s. Vedanta it will have more economical and commercial sense. However, GRIDCO has a long term PPA with M/s. Vedanta. The future power demand cannot be

forecast so much in advance. Hence, it will be prudent if GRIDCO has flexibility in operating its PPA depending upon its power requirement. This will be helpful to GRIDCO because it will give sufficient latitude to GRIDCO to play around the sources to optimise its power purchase cost.”

10. The petitioner-GRIDCO has sought for a review of the aforesaid order, vide its application registered as Case No.129 of 2021(present application) filed purportedly under Section 94 (1)(f) of the Electricity Act, 2003 read with Order 47 Rule 1 of the Code of Civil Procedure, 1908. Although several grounds have been taken by it vide its application, but having regard to the limited scope of jurisdiction to consider a review, only those grounds which appear to be relevant for the present purpose are stated hereunder:
- i) The order dated 05.10.2021, in effect, amounts to a review/modification of the order 27.01.2016 passed in Case No.21/2015 which has already attained finality, and the same obliterates the very basis and foundation of the order dated 27.01.2016.
 - ii) The order dated 05.10.2021, if stands as it is, would render the MOU and the duly approved PPA entered into by the parties inter-se redundant and nugatory.
 - iii) The direction issued vide order in question that Unit-II will normally operate as CGP completely wipes out the rights of GRIDCO to procure IPP power from the said unit.
 - iv) As per Para-28 of the order dated 27.01.2016 in Case No.21 of 2015, M/s. Vedanta Limited had to ensure that its contractual obligations as enumerated in the PPA dated 19.12.2012 should not be violated. The supply of power from IPP Unit-II of the plant cannot be utilized for self consumption. There is nothing in the Act to grant CGP status to a power generating unit in a conditional manner. In view of the above, allowing Unit-II of the thermal power plant of M/s. Vedanta Limited as a CGP in conditional manner by the Commission in its order dated 05.10.2021 in Case No.34 of 2018 is not in accordance with the law and hence an error apparent on the face of the record.
 - v) The application filed by M/s. Vedanta Ltd. (Case No.34/2018) was hit by the principle of res-judicata in view of the specific order passed in the Case No.21 of 2015 in respect of the Unit-II, and the said principle was not adhered to, while passing the order dated 05.10.2021.

- vi) Non consideration of the fact that M/s. Vedanta Ltd is obligated to supply uninterrupted power as per the solemn declaration/ undertaking / assurance given by it in course of hearing of the proceeding of the Case No.21 of 2015, is a glaring error apparent in the order dated 05.10.2021.
 - vii) The order in question, in effect, overrides the State Thermal Policy dated 08.08.2008 and the subsisting contract / PPA dated 19.12.2012 with regard to procurement of 5% of power at variable/ Energy Charge Rate (ECR) irrespective of whether Unit-II of M/s. Vedanta Ltd. operates as IPP or CGP.
 - viii) There is a glaring omission/ error in the order in question inasmuch as there is no clarification as to whether GRIDCO will be entitled to avail its share from other CGP units during outage/ low generation of Vedanta Unit-II as per the order dated 27.01.2016.
 - ix) M/s. Vedanta is in contempt of the order dated 27.01.2016 by stopping supply of power from Unit-II for the period from July, 2017 to December, 2019 and hence such a contemnor, as per the settled principle of law, could not have been granted further relief.
 - x) The Commission while arriving at the opinion/ conclusion vide paragraphs 27 to 29 of the order dated 05.10.2021 in Case No.34 of 2018, proceeded with erroneous and hypothetical estimation, as in course of the hearing/ proceeding of the said case, there was no deliberation on the relevant facts pertaining to those questions.
 - xi) The specific facts pleaded and points raised by GRIDCO in its written statements/ pleadings in the Case No.34 of 2018 were not considered, which is an apparent error on the face of record.
 - xii) The question as to the possibility of loss and suffering to be occasioned to the State Consumers at large owing to the direction issued in respect of Unit-II, having not been dealt with in speaking terms, the order dated 05.10.2021 in Case No.34 of 2018 suffers from apparent error which calls for a review in the interest of State Consumers.
11. The learned Sr. Advocate appearing for the Petitioner-GRIDCO in course of the hearing placed reliance on several authoritative pronouncements, including those made in the following cases:

- i) N. Birendra Singh Vrs. L. Priyakumar Singh, (2006) 9 SCC 650
 - ii) Rashmi Rekha Thatoi Vrs. State of Orissa, (2012) 5 SCC 690
 - iii) State of T.N. Vrs. K. Shyam Sunder, (2011) 8 SCC 737
 - iv) Sant Lal Gupta Vrs. Modern Coop. Group Housing Society Ltd., (2010) 13 SCC 336
 - v) Commissioner, Karnataka Board Vrs. C. Muddaiah, (2007) 7 SCC 689
 - vi) Noorali Babul Thanewala Vrs. K.M.M. Shetty, [(1990) 1 SCC 259]
12. The Respondent Nos.2 to 6, including Department of Energy, Government of Odisha (Respondent No.4), have supported the contentions raised by the Petitioner-GRIDCO for review of the order dated 05.10.2021 in Case No.34 of 2018.
13. On the other hand, the Respondent No.1-M/s. Vedanta Ltd. has resisted the Application for review, on the grounds, inter alia, as under:
- i. Since this Commission cannot act as a forum of Appeal over its own order and since the prayer of GRIDCO, if allowed, would amount to reversal of the order dated 05.10.2021, the Application for review is liable to be rejected in limine.
 - ii. The grounds taken by GRIDCO having not disclosed any error apparent on record, and there being a clear distinction between “erroneous decision” and “error apparent”, even assuming for sake of argument that the order in question was erroneous, the Commission is not the competent forum to embark upon that question.
 - iii. There being dynamic development in the power situation of the State in the aftermath of the order dated 27.01.2016 in Case No.21 of 2015, the principle of res-judicata is not applicable to the given case.
 - iv. No breach of contract or contempt of the order dated 27.01.2016 in Case No.21 of 2015 can be attributed to M/s. Vedanta Ltd. inasmuch as in terms of the provisions of the PPA, it has either to supply power or in case of any shortfall, it is to pay compensation qua the shortfall, if any.
 - v. The ground taken by the GRIDCO that the Commission while passing the order dated 05.10.2021 had not considered the effect of the order dated 27.01.2016, is factually not correct inasmuch as the Commission remained very much alive to the said order, as would reveal from the interim orders dated 05.01.2021, 04.05.2021 etc. passed in course of the proceeding of Case No.34 of 2018.
14. In course of hearing conducted on 11.04.2023, the Learned Sr. Counsel appearing for Respondent No.1-M/s Vedanta Ltd. while referring to various authoritative pronouncements (already quoted in paragraph 6 above) argued with emphasis that this Commission while exercising Review jurisdiction which is limited in scope, cannot

direct for rehearing of the matter, inasmuch as such a power is vested in the Court of Appeal alone in the event the matter is remitted back. It is his further contention that the grounds taken by the Petitioner-GRIDCO being those of an appeal, the review petition is prima facie not maintainable. As to the question of Res-judicata as raised by the Petitioner-GRIDCO with reference to the order dated 27.01.2016 passed in Case No.21 of 2015, the Learned Sr. Counsel for M/s. Vedanta Ltd. submitted that this Commission was very much conscious of the order dated 27.01.2016 while passing the order dated 05.10.2021 and on taking note of the change in the situation, the Commission recorded a view that the Petitioner-GRIDCO would be benefited if the power is not procured from the Respondent No.1-M/s. Vedanta Ltd. The Learned Counsel further argued that since this Commission is vested with powers under Section 86(1)(b) of the Electricity Act, 2003 to regulate any/all aspects of PPAs which have an impact on the procurement price, the order dated 05.10.2021 passed on appreciating the prevalent facts and circumstances cannot be treated as being hit by the principle of Res-judicata. He further urges that no new facts or evidence having been discovered and there being no mistake or error apparent on record, and equally there being no other sufficient reason to seek for review, the Application of Petitioner-GRIDCO needs to be rejected. Citing a decision of the Hon'ble Privy Council in the case of "Chhajju Ram Vrs. Neki", reported in AIR, 1922 PC 112, he submits that no reason other than the reason analogous in the meaning to those specified in Order 47 of the Civil Procedure Code, 1908 can be taken as sufficient reason for review.

15. The contentions of the Petitioner-GRIDCO Ltd., as it appears, are that the order dated 05.10.2021 in Case No.34 of 2018 is in violation of the subsisting PPA and in contrary to the interest of the consumers of the State inasmuch as the availability of 7%/5% of the power at variable cost, cheaper power on account of linkage coal and benefit of nil transmission charges & losses are concerned. Therefore, the Petitioner-GRIDCO has sought for the review of the said order dated 05.10.2021, primarily on the following grounds:-

- i) In the face of the subsisting PPA dated 19.12.2012 entered into by the Respondent No.1-Vedanta Ltd. and the Petitioner-GRIDCO and the order dated 27.01.2016 passed in Case No.21 of 2015 which has attained finality, the order dated 05.10.2021 directing that the Unit-II of M/s. Vedanta Ltd. shall normally operate as CGP is an error apparent on the face of record. Further, as per the Commission's earlier order dated 27.01.2016, there is nothing in the Act to grant CGP status to a power generating unit in a conditional manner.

- ii) The opinion /conclusion of the Commission recorded vide paragraphs 27 to 29 of the order dated 05.10.2021 in Case No.34 of 2018 being based on hypothetical analysis/estimation, and GRIDCO having not been afforded opportunity in course of the proceeding to place facts and materials in that respect, and the submission made by GRIDCO through written statement filed having not been taken into account in right perspective, the directions issued vide paragraph 30 of the order basing upon the said erroneous opinion call for review.
16. Basing upon the comparative assessment made vide paragraph 28 of the order dated 05.10.2021, it was opined that GRIDCO would save Rs.277.70 crores by drawing power from different other power stations without drawing power from M/s. Vedanta Ltd.. GRIDCO now questions the correctness of the said assessment on the following grounds:-
- Fixed Charges of Rs.399 Crore, assuming full entitlement (25%) of 4,200 MU. Whereas, Fixed Charge for 1,437.59 MU amounting to Rs.136.71 Crore would have been considered.*
 - OERC has approved 2,956 MU of power from Vedanta IPP against entitlement of 5,039 MU (4,200 MU at full cost + 1,109 MU at V.C) for the State consumers. At least, alternate supply for 2,956 MU would have been considered for savings computation.*
 - TSTPS II power has been allowed in ARR of GRIDCO for FY 2021-22. Therefore, the same is not available for replacement of Vedanta power.*
 - The summary of Fixed Charges paid by GRIDCO to Vedanta since commissioning of Unit #2(600 MW) is as mentioned below:*

FY	Quantum of Power Supplied by Vedanta(IPP) (in MU)	Amount of Fixed Charges (in Rs.Crores)	Annual Fixed Charges Approved by OERC in Tariff Orders (in Rs.Crores)
2010-11	486.18	34.12	205.3527
2011-12	2,043.01	197.46	464.5255
2012-13	3,053.99	301.71	471.7376
2013-14	2,860.74	293.24	480.4150
2014-15	3,096.38	271.86	434.1144
2015-16	3,414.16	253.73	410.5925
2016-17	3,216.84	281.99	406.6725
2017-18	1,061.52	62.45	402.8950
2018-19	978.11	48.28	399.4325
2019-20	747.84	45.78	399.4325
2020-21	2,806.01	218.87	399.4325
2021-22 (upto Nov'21)	1,314.35	127.97	399.4325
Total	25,079.12	2,137.46	4,874.04
Average	2,089.93	178.12	406.17
Note: AFC for FY:2010-11 is from Nov-2010 to March-2011. AFC for entire year shall come to be Rs.492.84 Crores.			

17. According to GRIDCO, had the power not been procured from M/s. Vedanta Ltd., (during FY 2020-21–2021-22), there would have been financial loss to the tune of Rs.155.48 crore. GRIDCO has estimated the probable loss in the tabular form as below:

ASSESSMENT OF PROBABLE FINANCIAL LOSS/GAIN TO GRIDCO

Alternate Sources	Power Not Allowed by OERC in ARR order of GRIDCO	Incremental drawal in MU beyond the present drawal	Actual Variable Cost (VC) (Paise/kWh)	Total Cost of drawing power from alternate source (Rs. in Cr)	Vedanta Cost (Rs. Cr) including fixed cost for same per Annum	Annual Loss (Rs. Cr) for not drawing from M/s. Vedanta per annum
	[1]	[2]	[3]	[4]	[5]	[5]-[4]
KHSTPS II	171.14	171.14	220.29	37.70	845.99 (287.34+ (3003.48*1.86/ 10))	-155.48
FSTPS III	373.42	373.42	276.22	103.15		
Power Exchange #	2,458.92	2,458.92	350.00	860.62		
TOTAL	3,003.48	3,003.48		1,001.47		
Assumptions:	Market Rate		350 P/U	Based on present market scenario.		
	FSTPS III & KSTPS II PLF		55%	Technical Minimum as taken in ARR order		

According to GRIDCO, the above analysis has been made on the following considerations:-

- a) Data are taken from OERC ARR Order of GRIDCO for FY 2021-22;
 - b) OERC approved 3,003.48 MU of power from Vedanta for State against share of 5,039 MU;
 - c) Fixed Charges allowed for supply of 3,003.48 MU is Rs.287.34 Crore. Alternate arrangement has to be made for the said quantum;
 - d) OERC has considered Variable Cost of Vedanta power @ 152 P/kWh whereas actual cost is 186 P/kWh. (as per Current Bill of Vedanta);
 - e) In case of meeting State Demand from existing PPAs, the cost including opportunity cost, will be the market price;
 - f) Vedanta power is delivered at STU Network, so no ISTS Charges & Losses payable;
 - g) Assuming Vedanta power is not available, Estimated Annual Loss in FY 2021-22 will be Rs. 155.48 Cr. as detailed above.
18. The question agitated as above by the Petitioner-GRIDCO through the present review petition, however, does not appear to be falling within the scope of the Order 47 Rule 1 of the Civil Procedure Code, 1908, inasmuch as such a question needs a factual enquiry which cannot be done unless the matter is reheard. As per the well settled

20. While issuing the directions as above, this Commission vide paragraph 28 of the order dated 27.01.2016 in Case No.21 of 2015 had observed as follows:

“28. The Commission has already taken a view as per our findings recorded in para 26 that while granting the request of the petitioner it has to be ensured that the contractual obligations of the petitioner as enumerated in the PPA dtd. 19.12.2012 should not be violated. Unit-II of the power plant consisting of 600 MW is dedicated to the state and the tariff for this unit has been determined on cost plus basis as IPP. Since this is already dedicated for supply to GRIDCO, power from this unit obviously cannot be utilised for self consumption. There is nothing in the Act to grant CGP status to a power generating unit in a conditional manner. Once CGP status is conferred on a particular generating unit it has full rights under the Electricity Act to use the entire power for self consumption. Since the Commission holds that the provisions of PPA regarding 100% supply of power to GRIDCO from unit II has to be ensured; therefore the prayer of the petitioner to grant CGP status to unit II cannot be allowed and status of this unit shall continue to remain as an IPP.”

21. According to us, the above order dated 27.01.2016 in Case No.21 of 2015 admits of no ambiguity in the direction of the Commission that the Unit-II of M/s. Vedanta Ltd. would continue to operate as IPP and connected to STU network of State Grid, and to remain as the State dedicated Unit, with a further stipulation that the quantum of power supply as specified shall not be disturbed at any point of time. The order further spelt out in clear terms with emphasis that the concession for conversion of the other three units from IPP to CGP was allowed on the basis of the assurance (solemn affirmation) given by M/s. Vedanta that it shall honour all the conditions as stipulated in the PPA notwithstanding such conversion, and comply with requirements of supplying power to GRIDCO as per the terms of the PPA. In the backdrop as above, the direction issued at paragraph 30(a) of order dated 05.10.2021 in Case No.34 of 2018 that the Unit-II of M/s. Vedanta Ltd. shall ordinarily operate as CGP, comes in direct contrast with the order dated 27.01.2016 passed in Case No.21 of 2015.
22. It is a settled principle of law that what cannot be done directly, is not permissible to be done obliquely. Thus, we agree with the contentions of the Petitioner-GRIDCO that the relief which was directly declined by the Commission in its order dated 27.01.2016 in Case No.21 of 2015, could not have been granted indirectly through a separate proceeding vide order dated 05.10.2021 in Case No.34 of 2018. That apart, a

party who executes an undertaking acting upon which the Court/Adjudicating Authority passes an order, cannot be allowed to breach/recede the same directly or indirectly. In the case of Noorali Babul Thanewala Vrs. K.M.M. Shetty (Supra), the Hon'ble Apex Court held as follows:

“11. When a Court accepts an undertaking given by one of the parties and passes orders based on such undertaking, the order amounts in substance to an injunction restraining that party from acting in breach thereof. The breach of an undertaking given to the Court by or on behalf of a party to civil proceedings is, therefore, regarded as tantamount to a breach of injunction although the remedies were not always identical. For the purpose of enforcing an undertaking that undertaking is treated as an order so that an undertaking, if broken, would involve the same consequences on the persons breaking that undertaking as would their disobedience to an order for an injunction. It is settled law that breach of an injunction or breach of an undertaking given to a Court by a person in a civil proceeding on the faith of which the Court sanctions a particular course of action is misconduct amounting to contempt.”

23. The application filed by M/s. Vedanta Ltd. giving rise to the case No.34 of 2018 was not an application for Review of the order dated 27.01.2016 passed in Case No.21 of 2015. To reiterate, neither M/s.Vedanta Ltd. challenged the order dated 27.01.2016 in any forum nor did it disown its assurance / undertaking basing upon which the said order dated 27.01.2016 was passed by this Commission. In that view of the facts and circumstances, we are of the humble and considered view that the directions issued, vide order dated 05.10.2021 in Case No.34 of 2018, that the Unit-II of the generating station of M/s. Vedanta Ltd. shall normally operate as CGP and its conditional conversion to IPP, is an error apparent on the record, being contrary to the contractual obligation of M/s. Vedanta Ltd. in PPA for supply of 100% power to GRIDCO from State dedicated Unit-II and also in contravention of the undertaking given by M/s. Vedanta Ltd. in Case No. 21 of 2015 basing upon which the Commission had passed order dated 27.01.2016 allowing conversion of the IPP Units I, III & IV to CGP Units.
24. In the context, it may be reiterated here that the Learned Sr. Counsel for the Petitioner-GRIDCO Ltd. had argued before the Hon'ble APTEL that the Applications filed by the Petitioner-M/s.Vedanta Ltd. before this Commission contrary to the PPA were not maintainable inasmuch as this Commission has no jurisdiction to modify the terms and conditions specified in the PPA which is an agreement inter parties, binding

on them. The Hon'ble APTEL vide paragraph-VII of the order dated 13.01.2023 observed that such contentions can be raised by M/s. GRIDCO Ltd. before this Commission, obviously in the present Review proceeding.

25. For the whole discussions made here-in-before, we are of the considered view that in the face of the subsisting PPA dated 19.12.2012 which is for a tenure of as long as 25 years, and the order dated 27.01.2016 passed in Case No.21 of 2015 which has already attained finality, and also the written undertaking given by M/s. Vedanta Ltd. through affidavit in course of the proceeding of Case No.21 of 2015 to the effect that it shall comply with the requirement of supplying power to M/s. GRIDCO Ltd. as per the terms and conditions of the PPA, the direction issued vide the order dated 05.10.2021 that the Unit-II of M/s. Vedanta Ltd. shall normally operate as CGP, and the consequential directions are found to be patently and self-evidently erroneous. Hence, the Review Petition is allowed directing both the Respondent No.1-M/s. Vedanta Ltd. and the Petitioner-GRIDCO to abide by the Order dated 27.01.2016 passed by this Commission in Case No.21 of 2015. Without prejudice to the PPA dated 19.12.2012 and the order dated 27.01.2016 passed in Case No.21 of 2015, either side is at liberty to raise individual issue, if any, pertaining to individual cause of action, if any, through appropriate proceeding which shall be decided according to law. The Order dated 05.10.2021 passed in Case No.34 of 2018 is reviewed accordingly.
26. The Application for Review is disposed of hence.

Sd/-
(S. K. Ray Mohapatra)
Member

Sd/-
(G. Mohapatra)
Member

Sd/-
(S. C. Mahapatra)
Chairperson