

**ODISHA ELECTRICITY REGULATORY COMMISSION
PLOT NO. 4, CHUNUKOLI, SAILESHREE VIHAR,
CHANDRASEKHARPUR,
BHUBANESWAR-751021**

**Present: Shri G. Mohapatra, Officiating Chairperson
Shri S. K. Ray Mohapatra, Member**

Case No. 45/2024

Sri Kamala Kanta Mohanta	Petitioner
Vrs.		
M/s. Vedanta Aluminium Limited & Another	Respondents

In the matter of: **An application under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 70 of the OERC (Conduct of Business) Regulations, 2004 and under the provisions of Order 47 Rule-1 of the Code of Civil Procedure, 1908 for review of order dated 26.10.2023 of the Commission passed in Case No.81 of 2023.**

For Petitioner: Shri Kamala Kanta Mohanta along with Shri A.K. Sahani, the Authorized Representative.

ORDER

Date of Hearing: 23.07.2024

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The case is taken up for hearing today on hybrid arrangement on the question of admission.

2. The Petitioner- Shri Kamala Kanta Mohanta, Ex-Chief Engineer-cum-CEI, Western Zone, Odisha, has filed the present Petition under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 70 of the OERC (Conduct of Business) Regulations, 2004 and under the provisions of Order 47 Rule-1 of the Code of Civil Procedure, 1908 seeking the review of order dated 26.10.2023 passed in Case No.81 of 2023, wherein the Commission had observed as under:

“16. It may be mentioned here that after closure of the argument on 17.10.2023, yesterday i.e. on 25.10.2023, the written submission was received from the Petitioner M/s. Vedanta Ltd. vide which it has mentioned that in the meantime, the Petitioner has received an affidavit dated 25.10.2023 filed by Respondent No. 2-CEI (WZ), seeking liberty to withdraw its earlier written statement filed on 18.10.2023 before this Commission in order to file a consolidated written statement. CEI being arrayed as Respondent No.2 in this proceeding has already filed his written statement supported by an affidavit dated 18.10.2023 and the argument was also advanced by

him in course of hearing conducted through hybrid mode. Needless to mention here that this Commission in foregoing paragraphs of this order has dealt with the submissions made by the CEI-Respondent No.2 while deciding the relevant issues. In these circumstances, the communication received by the Petitioner directly from the Respondent No.2-CEI, in the aftermath of the conclusion of the hearing of the present matter, particularly when the case stands reserved for orders, is most likely to take Respondent No.1-TPWODL by surprise and as such, the so called communication of Respondent No.2-CEI (WZ), Sambalpur to the Petitioner does not merit any consideration at this stage. This kind of communication by a party after closure of the argument is undesirable.”

3. The Review Petitioner submits that while working in the capacity of the Chief Engineer-cum-CEI, Western Zone, Sambalpur, Odisha and being one of the Respondents in the Case No.81 of 2023, has submitted his reply on 18.10.2023 in that case which was considered by the Commission as reflected in the impugned order dated 26.10.2023 of this Commission. However, abiding by the specific instruction and direction of his higher authority i.e. the EIC (Electricity)-cum-PCEI, Odisha, Bhubaneswar through telephonic call and whatsapp message dated 24.10.2023 and 25.10.2023, he made an application on 25.10.2023 to withdraw his submissions dated 18.10.2023 in Case No.81 of 2023. The aforesaid remark of the Commission at Para-16 of the said order dated 26.10.2023 pertains to receipt of copy of the withdrawal petition dated 25.10.2023 by M/s. Vedanta Aluminum Limited. As per the said remark in Case No.81 of 2023, the Department of Energy, Government of Odisha have initiated departmental action against him. Since the above action of the Review Petitioner has not been made by his own wish, but as per the specific instruction of the EIC (Electricity)-cum-PCEI, Odisha, Bhubaneswar, the Review Petitioner prays before the Commission to admit the Review Petition condoning the delay of about 154 days and pass an appropriate order by modifying the aforesaid remarks at Para-16 of the Order dated 26.10.2023 passed in Case No. 81 of 2023.
4. Heard the Petitioner in person. For the sake of convenience, both the points on the condonation of delay and on maintainability of the Review Petition are synchronously heard together.
5. The right to Review has been conferred by Section 114 of the Code of Civil Procedure, 1908. The limitation and conditions are provided under Order 47 Rule 1 CPC.

The Order 47 Rule 1 of the Code of Civil Procedure, 1908 is given below:

“Application for Review of Judgment-. (1) 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)

(c)

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 judgment to the Court which passed the decree or made the order”

6. In this regard, in *S. Madhusudhan Reddy vrs. V. Narayana Reddy* (Judgment of the Hon’ble Supreme Court in Civil Appeal No. 5503-04 of 2022 dated 18.08.2022), the Hon’ble Supreme Court held that the power of review can be exercised for correction of a mistake, but not to substitute a view; such powers can be exercised within the limits of the statute dealing with the exercise of power; review cannot be treated like an appeal in disguise; the mere possibility of two views on the subject is not a ground for review; once a review petition is dismissed, no further petition of review can be entertained; the rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practised; the error contemplated under the rule must be such which is apparent on the face of the record, and not an error which has to be fished out and searched; it must be an error of inadvertence; the words “any-other sufficient reason appearing in Order 47 Rule 1 of the CPC” must mean “a reason sufficient on grounds at least analogous to those specified in the rule”; error apparent on the face of the proceedings is an error which is based on clear ignorance or disregard of the provisions of law; such an error is an error which is a patent error, and not a mere wrong decision; it must be one which must be manifest on the face of the record; what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case; in a review petition it is not open to the Court to re-appreciate the evidence and reach a different conclusion, even if that is possible; appreciation of the evidence on record is fully within the domain of the appellate court; if,

on appreciation of the evidence produced, the court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto; and, under the garb of filing a review petition, a party cannot be permitted to repeat old and overruled arguments for reopening the conclusions arrived at in a judgment.

7. In *Krishan Kant Bhargava vrs. Bhagwan Sharan*, 2022 SCC On Line MP 475, the Madhya Pradesh High Court, relying on the judgements of the Hon'ble Supreme Court in *Kamlesh Verma vrs. Mayawati*, (2013) 8 SCC 320, *Moran Mar Basselios Catholicos vrs. Most Rev. Mar Poulouse Athanasius*, AIR 1954 SC 526, *Board of Control of Cricket India v. Netaji Cricket Club*: (2005) 4 SCC 741, and *Akhilesh Yadav vrs. Vishwanath Chaturvedi*: AIR 2013 SCW 1316, observed that the scope of review of an order by a Court of Civil Judicature, is circumscribed by Section 114 of the Code which provides that a review of an order is permissible upon discovery of new and important matter of evidence; only error apparent on the face of record is liable to be reviewed; and such error must stare one in the face where no elaborate arguments are necessary to pin-point the error.
8. An application for review is 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. 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 vrs. Most Rev. Mar Poulouse Athanasius*: AIR 1954 SC 526; *Board of Control for Cricket in India vrs. Netaji Cricket Club*, (2005) 4 SCC 741; *Vedanta Ltd. vrs. Odisha ERC*, 2023 SCC On Line APTEL 4).
9. 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 vrs. Uppari Muthamma*: (1998) 3 AnWR 132 (DB); *Shivdeo vrs. State of Punjab*, AIR 1963 SC 1909; *Vedanta Ltd. vrs. Odisha ERC*, 2023 SCC On Line APTEL 4). 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 vrs. Motilal, (2009) 14 SCC 663; Rajendra Kumar vrs. Rambai, (2007) 15 SCC 513; Lily Thomas vrs. Union of India: (2000) 6 SCC 224; Vedanta Ltd. vrs. Odisha ERC, 2023 SCC On Line APTEL 4).

10. A review lies only for correction of a patent error. (Thungabhadra Industries vrs. Government of A.P., AIR 1964 SC 1372; Mudiki Bhimesh Nanda vrs. Tirupati Urban Development Authority, (2005) 4 ALD 792; Delhi Administration vrs. Gurdip Singh Uban, (2000) 7 SCC 296; Vedanta Ltd. vrs. Odisha ERC, 2023 SCC On Line APTEL 4). 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 vrs. Union of India: (2000) 6 SCC 224; Vedanta Ltd. vrs. Odisha ERC, 2023 SCC On Line APTEL 4). 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 vrs. Tirupati Urban Development Authority, (2005) 4 ALD 792 (DB)); Satyanarayan Laxminarayan Hegde vrs. Mallikarjun Bhavanappa Tirumale, AIR 1960 SC 137; Vedanta Ltd. vrs. Odisha ERC, 2023 SCC On Line APTEL 4). 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 vrs. Union of India, 1980 Supp SCC 562: AIR 1980 SC 2041; P. Neelakanteswaramma vrs. Uppari Muthamma : (1998) 3 AnWR 132 (DB); Vedanta Ltd. vrs. Odisha ERC, 2023 SCC On Line APTEL 4).
11. 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 vrs. Palani Roman Catholic Mission, (2009) 10 SCC 464; Vedanta Ltd. vrs. Odisha ERC, 2023 SCC On Line APTEL 4). 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 vrs. Lt. Governor Delhi, (1980) 2 SCC 167; Mudiki Bhimesh Nanda vrs. Tirupati Urban Development Authority, (2005) 4 ALD 792 (DB); Sow Chandra Kante vrs. Sheikh Habib : (1975) 1 SCC 674; Vedanta Ltd. vrs. Odisha ERC, 2023 SCC On Line APTEL 4).
12. 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 vrs. State of Rajasthan: AIR 1965 SC 845; Lily Thomas vrs. Union of India, (2000) 6 SCC 224; Vedanta Ltd. vrs. Odisha ERC, 2023 SCC On Line APTEL 4).

13. 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 vrs. Sumitri Devi, (1997) 8 SCC 715; Mudiki Bhimesh Nanda vrs. Tirupati Urban Development Authority, (2005) 4 ALD 792 (DB); Vedanta Ltd. vrs. Odisha ERC, 2023 SCC On Line APTEL 4). 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 vrs. Usha Rani Banik: (2006) 4 SCC 78; Vedanta Ltd. vrs. Odisha ERC, 2023 SCC On Line APTEL 4).
14. 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 vrs. Aribam Pishak Sharma: (1979) 4 SCC 389; Meera Bhanja vrs. Nirmala Kumari Choudhury, (1995) 1 SCC 170; Mudiki Bhimesh Nanda vrs. Tirupati Urban Development Authority, (2005) 4 ALD 792 (DB); Vedanta Ltd. vrs. Odisha ERC, 2023 SCC On Line APTEL 4).
15. While it is true that the scope of interference in review proceedings is extremely limited, and it is only where the tests stipulated in Order 47 Rule 1 of the CPC are satisfied that review of the earlier order can be sought, that does not mean that this Commission can, in no case, review its earlier order. However, limited the scope of interference in review proceedings may be, what is required to be ascertained is whether the review sought by the petitioner satisfies the requirements of Order 47 Rule 1 of the CPC and, if it does, then the earlier order of this Commission must, necessarily, be reviewed and set aside to the extent it suffers from an error apparent on the face of the record. Let us now examine whether the contentions, raised in the present review petition, justify exercise of the power of review to interfere with the earlier order passed by this Commission.

16. In the instant case, the Review Petitioner has not taken any such specific permissible ground in his review application. The averments made by the Petitioner in his application that he had acted as per the telephonic instruction/directions and whatsapp message issued by his higher authority, cannot be considered as sufficient grounds for invoking the power under Order 47 Rule 1 of the Code of Civil Procedure, 1908. Thus, the facts narrated by the Petitioner in the present Review Petition have not attracted any one of the ingredients of the above Order 47 Rule 1 of the CPC.
17. In the light of the above said discussions, we are of the considered opinion that the impugned order is not liable for review and the present review application, being barred by limitation, is not maintainable on facts and law. Therefore, the prayer of the Petitioner for review of the impugned order, being devoid of merit, is rejected.
18. Accordingly, the case is disposed of.

Sd/-

(S. K. Ray Mohapatra)
Member

Sd/-

(G. Mohapatra)
Officiating Chairperson