

**ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
PLOT NO. 4, CHUNOKOLI, SHAILASHREE VIHAR,
CHANDRASEKHARPUR,
BHUBANESWAR-751021

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

Case No. 47/2024

M/s. Suraj Products Ltd. Vrs. The E.E (Elect.), TPWODL, RED, Rajgangpur, Dist.- Sundargarh	Petitioner Respondent
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In the matter of: **Application under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 70 of the OERC (Conduct of Business) Regulations, 2004 and the provisions of Order 47 Rule-1 of the Code of Civil Procedure, 1908 seeking review of order dated 18.05.2024 of the Commission passed in Case No.03 of 2024 with respect to the violations of the provisions of the Act, Policy and Regulations in the above proceeding.**

For Petitioner: Shri A.K. Sahani, the Authorized representative along with Shri F.R. Mohapatra.

ORDER

Date of Hearing: 20.08.2024

Date of Order: 28.08.2024

The Petitioner-M/s. Suraj Products Ltd. 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 the provisions of Order 47 Rule 1 of the Code of Civil Procedure, 1998 seeking review of the Commission's order dated 18.05.2024 passed in Case No.03 of 2024.

2. The Review Petitioner in the petition has submitted that there are errors apparent on the face of record in the Commission's order dated 18.05.2024 in Case No. 03 of 2024 which are required to be reviewed and modified and they are concisely stated as hereunder:
- a) The Review Petitioner is an industrial HT consumer (Steel Plant) with Contract Demand (CD) of 4800 kVA and availing power supply at 33 kV voltage level.
 - b) As per the RST order dated 24.03.2022 for FY 2022-23, the Load Factor Rebate/Special Discount benefit shall be allowed to the steel plants having CD more than 1 MVA. But the Respondent-Licensee did not allow the same in the energy bills of the Review Petitioner. Therefore, the Review Petitioner approached the Learned GRF, Rourkela in CC Case No.553 of 2022 and the Learned GRF dismissed the application with the view that the claim of the Review Petitioner for such benefit is not valid.

- c) Thereafter, the Review Petitioner had approached the Learned Ombudsman-II, Bhubaneswar in C.R. Case No. OM(II) W-14 of 2022 and the Learned Ombudsman-II vide its order dated 28.06.2023 has passed the following:

*“1. The Respondent is directed to extend the Load Factor Rebate/Special Discount benefit to the unit of the petitioner as per Para-204 of the RST order for FY 2022-23 and revise the bills of the petitioner from April, 2022 to March, 2023 and serve to the petitioner within 15 days from the date of this order & file compliance of the above within 15 days thereafter before this Authority.
2. The present RST order for FY 2023-24 is not applicable to this petitioner.”*

- d) The Review Petitioner had furnished its acceptance of Award of the Learned Ombudsman-II before the Respondent-Licensee on 03.07.2023 for implantation of the above order. The Respondent-Licensee without implementing the above order dated 28.06.2023, had filed a Review Petition before the Learned Ombudsman-II after a period of more than one month, which was rejected vide order dated 10.11.2023 by the Learned Ombudsman-II. Even after rejection of the Review petition the Respondent-Licensee did not implement the earlier order dated 28.06.2023 of the Learned Ombudsman-II.
- e) Thereafter, the Petitioner had filed the petition before this Commission under Section 142 of the Electricity Act, 2003 in Case No.03 of 2024 alleging non-implementation of the aforesaid order dated 28.06.2023 of the Learned Ombudsman-II. The Commission vide its order dated 18.05.2024 passed in Case No.03 of 2024 has passed the following:

“9. With due consideration of the observations of the Hon'ble APTEL dated 05.02.2016 in Appeal No. 34 of 2015 as quoted above, it is found that the Ombudsman stands divested of the jurisdiction to further interpret the Tariff order and it is only the Regulatory Commission, which is vested with the authority under the Law to clarify or to interpret the Tariff order pronounced by it.

10. In view of the discussions as stated above, we do observe that the prayer of the Petitioner falls beyond the scope of Section 142 of the Electricity Act, 2003 and thus, the petition is not maintainable, on facts and law.”

- f) The order passed by the Learned Ombudsman-II on 28.06.2023 should have been implemented by the Respondent-Licensee on or before 28.07.2023 as per the Regulation 10(7) read with Regulation 10(6) of the OERC (GRF & Ombudsman) Regulations, 2004. If there is any irregularity in the order of the Learned Ombudsman-II, then the Respondent-Licensee would have been moved to the appropriate Court of Law, but not before this Commission where a case has been filed under Section 142 of the Electricity Act, 2003. The Respondent-Licensee has neither implemented the order

till date nor approached the Hon'ble High Court of Orissa. In such a case, there is no provision in law for a consumer to move different forums/courts.

- g) The Petitioner had approached the Commission for implementation of the said order of the Learned Ombudsman-II by spending money for it, but not for adjudication of the case passed by the Learned Ombudsman-II. The Commission is not an Appellate Forum to adjudicate the matter as to whether the order passed by the Forums below, are correct or not.
- h) In the impugned order, the Respondent-Licensee has misled the Commission by citing the case of M/s. Gautam Ferro Alloys, Ranchi Vrs. Jharkhand Bijli Vitran Nigam Ltd. & Others in the Hon'ble APTEL which had gone against the order of the Jharkhand Bijli Vitran Nigam Ltd. and has no relevance to the instant case.
- i) The Commission vide the impugned order dated 18.05.2024 in Case No.03 of 2024 has dismissed the order of the Ombudsman-II citing para 25 & 26 of the order dated 05.02.2016 passed by the Hon'ble APTEL in Appeal No.34 of 2015. As seen from the para 25 of the said order of the Hon'ble APTEL, there is order of the Hon'ble Supreme Court that the State Commission cannot adjudicate disputes to grievances of individual consumers. The said order of the Hon'ble APTEL is based on Tariff Notification by related State Commission. Such order cannot be a reference to adjudicate the decision of the Forum. There is settled provision in the Act i.e. a review petition to be filed with necessary formalities against any Tariff order passed by the Commission. In the instant case, the Respondent-Licensee has not maintained the procedure for review of the Tariff order for the FY 2022-23.
- j) This Commission has no jurisdiction to adjudicate the order of the Learned Ombudsman-II. Basing on the wrong interpretation of the aforesaid order of the Hon'ble APTEL, the Commission has passed the impugned order dated 18.05.2024, thereby interest of the consumer is denied. If basing on the said order of the Hon'ble APTEL the order of the Learned Ombudsman-II can be adjudicated, then the Respondent-Licensee should have filed a petition earlier before this Commission. But when the Petitioner filed the application under Section 142 of the Electricity Act, 2003 alleging non-compliance of the aforesaid order of the Learned Ombudsman-II, it should not be adjudicated by the Commission.
- k) In view of the above, the Review Petitioner prays before the Commission to kindly review the impugned order considering the factual aspects for interest of justice and necessary redressal of the dispute of the Petitioner.

3. We have heard the Petitioner on the point of admission of the present review petition through hybrid arrangement. We have perused the impugned order and have also gone through the record.
4. We shall first examine whether the present Review Petition can be admitted in the light of the provisions of Order 47 Rule 1 of the Code of Civil Procedure, 1908. Order XLVII Rule 1 of the Code of Civil Procedure, 1908 provides as follows:

“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) *by a decree or order from which no appeal is allowed, or*
 - c) *by a decision on a reference from a Court of Small Causes, 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.”*
5. Section 94 (1) (f) of the Electricity Act, 2003 confers power of review of its decisions, directions and orders of the Commission. However, neither the Act nor the Rules framed thereunder indicated any parameters for exercise of this power. In the absence of any indicia, it is not only apt but also permissible to follow the law laid out by the constitutional Courts in this regard.

In *Sow Chandra Kanta & Another Vrs. Sheik Habib* (1975 SCC (4) 457), the Hon’ble Supreme Court held that a review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility.

In *P.N Eswara Iyer Vrs. The Registrar*, Supreme Court of India (1980 AIR 808) a constitution Bench of the Hon’ble Supreme Court reaffirmed the ratio in *Chandra Kanta* (1 Supra).

In *Shri Ravinder Kumar Vrs. Kamal Sen Gupta* (2008)⁸, the Hon’ble Apex Court held that unlike in appeal, scope of review is grossly circumscribed to such cases where review seeker has made a discovery of a new and important matter of evidence, which, after exercise of due diligence, was not within his knowledge and could not be produced by him when the decree or order where some mistakes or errors apparent on the face of the record have been made or when the Court has overlooked some obvious facts on the basis of which decision could be made. The Court further held that for a review, one of the above three considerations should be established.

In Devender Pal Singh Vrs. State of NCT of Delhi (2003) 2 SCC 501, the Hon'ble Apex Court held that review is not a rehearing of appeal all over again and that scope of interference is very limited to aspects such as miscarriage of Justice.”

6. Further, in Lily Thomas & Others Vrs. Union of India & Others. [(2000) 6 SCC 224], the Hon'ble Apex Court held as under:

“56. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated as an appeal in disguise. The mere possibility of two views on the subject is not a ground for review.....”

In Union of India Vrs. Sandur Manganese and Iron Ores Limited & Others [(2013) 8 SCC 337], the Hon'ble Apex Court held as under:

“23. It has been time and again held that the power of review jurisdiction can be exercised for the correction of a mistake and not to substitute a view”

In Parsion Devi & Others Vrs. Sumitri Devi & Others [(1997) 8 SCC 715], the Hon'ble Apex Court held as under:

“9. Under Order 47 Rule 1 of 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 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 under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 of CPC, it is not permissible for an erroneous decision to be “reheard and corrected”. A review petition, it must be remembered has limited purpose and cannot be allowed to be “an appeal in disguise.”

In Arun Dev Upadhaya Vrs. Integrated Sales Service Limited and Another, 2023 SAR (Civ) 932, the Hon'ble Apex Court have held that the scope of Review is limited to correcting errors apparent on the face of the record. It cannot be used as an appellate power to re-examine the merits of the case.

7. Keeping in view the limited scope of interference in review jurisdiction as per the dicta laid down by the authoritative pronouncements of the Hon'ble Apex Court as discussed above, we shall now consider the submissions of the learned counsel for the petitioner.
8. The main contentions raised by the Review Petitioner, that are relevant to the review are:
- (A) The Review Petitioner has approached the Commission under Section 142 of the Electricity Act, 2003 in Case No.03 of 2024 alleging non-implementation of the order dated 28.06.2023 of the Learned Ombudsman-II. But the Commission vide its impugned order dated 18.05.2024 passed in Case No.03 of 2024 has adjudicated the

matter and has taken the view that the order passed by the Learned Ombudsman-II was rendered without jurisdiction. Since the Commission is not an Appellate Forum, it has no jurisdiction to adjudicate the matter as to whether the orders passed by the Forums are correct or not.

(B) The Commission vide the impugned order dated 18.05.2024 in Case No.03 of 2024 has disapproved the order of the Ombudsman-II citing para 25 & 26 of the order dated 05.02.2016 passed by the Hon'ble APTEL in Appeal No.34 of 2015. In para 25 of the said order of the Hon'ble APTEL, it is mentioned that there is order of the Hon'ble Supreme Court that the State Commission cannot adjudicate disputes in respect of grievances of individual consumers. The said order of the Hon'ble APTEL is based on Tariff Notification by concerned State Commission. Such order cannot be a reference to adjudicate the decision of the Forum. There are provisions in the Act i.e. a review petition can be filed with necessary formalities against any Tariff order passed by the Commission. In the instant case, the Respondent-Licensee has not maintained the procedure for review of the Tariff order for the FY 2022-23.

9. The Review Petitioner has failed to show as to how the finding of the Commission is erroneous. The Review Petitioner is merely trying to re-agitate the issue which is not permissible and is not within the purview of the Review jurisdiction. In the order dated 18.05.2024 pronounced by the Commission in Case No.03 of 2024, it has been clearly observed that the Ombudsman-II is divested of jurisdiction to interpret the Tariff order delivered by the Commission and as such, the order sought to be executed by the DISCOMs was inexecutable being a nullity as passed by the Ombudsman-II without Jurisdiction. This conclusion of the Commission cannot be altered by invoking the power of review under Order 47 Rule 1 of the Code of Civil Procedure, 1908 or by Section 94 (1) (f) of the Electricity Act, 2003.
10. For the reasons mentioned above, we do not find any ground for admitting the present Review Petition under Order 47 Rule 1 of the Code of Civil Procedure, 1908 or under Section 94 (1) (f) of the Electricity Act, 2003. Hence the present Review Petition is dismissed at the stage of admission.

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

Sd/-
(G. Mohapatra)
Officiating Chairperson