

**BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY**  
**Appellate Jurisdiction, New Delhi**

IA Nos. 24 & 25 of 2008 in Review Petition No. 4 of 2008 (AFR No.  
32 of 2008) in Appeal No. 276 of 2006

Dated this 07<sup>th</sup> day of March 2008

**Coram : Hon'ble Mr. H. L. Bajaj, Technical Member**  
**Hon'ble Ms. Justice Manju Goel, Judicial Member**

**IN THE MATTER OF:**

**Oil & Natural Gas Corporation Ltd.**

Hazira Gas Processing Complex,  
Co-generation Plant,  
ONGC Nagar, Bhatpore,  
Surat, Gujarat

.... Review Petitioner / Respondent No.2

**Gujarat Energy Transmission Corp. Ltd.**

... Appellant

Versus

1. **Gujarat Electricity Regulatory Commission**

Neptune Towers, Ashram Road,  
Ahmedabad,  
Gujarat

2. **Oil & Natural Gas Corp. Ltd.**

Hazira Gas Processing Complex,  
Co-generation Plant,  
P.O. ONGC Nagar, Bhatpore,  
District Surat,  
Gujarat.

3. **Gujarat Urja Vikas Nigam Ltd.**

Sardar Patel Vidyut Bhavan,  
Race Course, Vadodara,  
Gujarat.

... Respondents

Counsel for the Applicant/  
Review Petitioner(s) : Mr. Gourab Banerjee, Sr. Adv.  
Mr. Ajay Mehta  
Mr. Saurav Agarwal and  
Mr. Arjun Krishnan

Counsel for the Respondents : Mr. M. G. Ramachandran  
Mr. Anand K Ganeshan and  
Ms. Swapna Seshadri for  
GETCO

**J U D G M E N T**

**Ms. Justice Manju Goel, Judicial Member**

IA Nos. 24 & 25 of 2008

1) The interlocutory application No.24 seeks condonation of delay in filing the petition. The interlocutory application No. 25 is for exemption from filing certified copy of the order which is sought to be reviewed. The two applications are not opposed. The two applications are considered and allowed.

2) The Review Petition be numbered.

Review Petition No. 4 of 2008

3) The review petition seeks review of this Tribunal's judgment dated 28<sup>th</sup> September, 2007 in Appeal No. 276 of 2006.

4) The brief facts for the limited purpose of appreciation of the petition are as under:

The Government of Gujarat adopted a resolution, inter alia, to the effect that parallel operation charges shall be charged at rates to be fixed by Gujarat Electricity Board (GEB)/licensees with the approval of the Government. The GEB fixed the parallel operation charges vide a Circular No. 687 dated 21.12.98. However, in this interregnum i.e. between 09.11.98 and 21.12.98, the Government of Gujarat issued a notification dated 12.11.98 purporting to establish Gujarat Electricity Regulatory Commission (GERC) under the Electricity Regulatory Commission's Act 1998 (ERC Act). Section 29 of the ERC Act 1998 gave exclusive jurisdiction to the Commission to fix tariff. The parallel operation charges were in the nature of tariff. The question before this Tribunal was whether the Circular No.687 could be valid because before the Circular was issued the Commission had come to be established.

5) This Tribunal held that although the Government of Gujarat issued a notification dated 12.11.98 purporting to establish GERC, in fact no Commission came into being till 19.04.99. This finding was based on the fact that on 12.11.98 the Government of Gujarat issued two notifications, one purporting to establish the GERC and the other appointing the selection committee for the members of the Gujarat State Electricity Regulatory Commission (GSERC).

6) We held that the members were subsequently selected and appointed vide a notification dated 10.03.99. We also held the power of the Board to fix tariff comes to an end only on establishment of a Commission. We also came to the conclusion that despite the notification dated 12.11.98 no Commission had actually come into existence. We accordingly held that Circular No.687 was not *ab initio* void. The review petition contends that the Commission had actually come into existence on 12.11.98 on issuance of the notifications and therefore the Circular No.687 dated 21.12.98 is *ab initio* void. It is contended that even if the members were selected and appointed later, the legal position regarding the Board's power to fix tariff will be the same. It is contended that as soon as the notification dated 12.11.98 was issued, whether or not the members of the Commission were selected and appointed the Board would lose its power to fix the

tariff. It is contended that this is an error apparent on the face of the record and calls for a review.

7) We have heard the counsel for both the sides. It appears that the learned counsel for the appellant is not in agreement with the findings of this Tribunal that the Circular No. 687 which was issued pursuant to Government's resolution dated 09.11.98 (which was itself valid) was not *ab initio* void despite the Gujarat Government's notification dated 12.11.98 purporting to establish a Commission as the Commission in fact did not come into existence till the members were selected and appointed. In our opinion this is not what is understood as error apparent under order 47 Rule 1 of the Civil Procedure Code prescribing a ground for review. This Court has not overlooked the issue involved and has actually dealt with it. Any party aggrieved with this judgment is entitled to challenge the same in an appeal. The review jurisdiction cannot be used for challenging the merit of an order. In our opinion, the judgment dated 28<sup>th</sup> September, 2007 is not liable to be reviewed on the ground raised by the appellant. The review petition is accordingly dismissed.

Pronounced in open court on this *07<sup>th</sup> day of March, 2008.*

**( Mrs. Justice Manju Goel )**  
**Judicial Member**

**( Mr. H. L. Bajaj )**  
**Technical Member**

The End