Before the Appellate Tribunal for Electricity
Appellate Jurisdiction
New Delhi

Review Petition No.3 of 2006 and I.A. No.60/2006 in A.No.191/05

Dated this 2nd day of June 2006

Present : **Hon'ble Mr. Justice E Padmanabhan, Judicial Member**
Hon'ble Mr. H. L. Bajaj, Technical Member

Maharashtra State Electricity Distribution Company Ltd.

……Petitioner/Appellant

Versus

1. Llyods Steel Industries Ltd.
2. Maharashtra Electricity Regulatory Commission

……Respondents/Respondents

Counsel for the Petitioner	Mr. S. Diwan, Sr. Advocate Mr. Kiran Gandhi, Ms. Ramni Taneja, Mr. Balu G. and Mr. Amit Sharma -Advocates
Counsel for the Respondents	Mr. R.O. Agarwal with Mr. Narang - Advocates

JUDGMENT

1. The Review Petition No.3 of 2006 has been moved by the appellant in Appeal No.191 of 2005 seeking review of the Judgment dated 5th April 2006, made in Appeal No.191 of 2005.

2. I.A. No.60 of 2006 has been moved by the very same petitioner seeking for Condonation of Delay in moving the Review Petition by way of abundant caution. The counsel for the petitioners even without orders served a notice, on the counsel for contesting respondent, about the Review Petition being listed for admission and

this made the said counsel to attend the hearing, even though we have not admitted the Review Petition nor we have ordered notice.

3. In the Review Petition, it is sought to be contended that this Tribunal has recorded following findings erroneously:-

a) "The learned counsel appearing for the appellant while fairly admitting the sum of Rs.227.9 lacs has been collected by the appellant in excess, even though the first Respondent had already remitted the SLC and SCC on the earlier occasion for the entire contract demand of 90 MVA." (Para 8)

b) "There is no dispute that the appellant has collected the amount in excess of what it is entitled towards SLC/SCC when the first Respondent sought for increase in or restoration of entire contracted load." (Para 8)

c) "There is no dispute that the second time collection of SLC and SCC is illegal, as it is not supported by statutory Terms and Conditions of Supply or by the Board' circular." (Para 8)

d) However, the counsel for the appellant could not challenge the findings that the collection of Rs.227.9 lakhs is unlawful, unauthorised and contrary to the Regulations". (Para 9)

4. It is further contended that this Tribunal has wrongly/ erroneously recorded the concessions/ findings while no such concessions/ admissions were made by the counsel appearing on behalf of the petitioner. The very same contention gets reflected in the remaining grounds.

5. The learned counsel, Mr. Diwan, appearing for the petitioner also referred to the affidavit sworn to and filed by the advocate who appeared at the hearing of the appeal and contended that if what has been recorded by this Tribunal is not modified or reviewed, the same will prejudice the Petitioner in the appeal that may be preferred against the Judgment rendered in Appeal No.191 of 2005.

6. The learned counsel also relied upon the pronouncement of the Supreme Court in *Ram Bali vs. State of U.P. reported in (2004) 10 SCC 598* and *Commissioner of Customs, Mumbai vs. Bureau Veritas and others reported in (2005) 3 SCC 265*. According to the learned counsel, if the order is not reviewed with respect to the sentences recorded in Para 8 of the Judgment, the appellant will be prejudiced and the appellant will be shut out in the appeal. In this respect the following dictum of the Supreme Court rendered in the said two pronouncements are cited.

Ram Bali Vs. State of U.P. 2004 (10) SCC 598:

> *"9. We notice that the High Court Specifically records that only two points were urged before it. It has to be noted that the statement of as to what transpired at the hearing, the record in the judgment of the Court are conclusive of the facts so stated and no one can contradict such statement on affidavit or by other evidence. If a party thinks that the happenings in court have been erroneously recorded in a judgment, it is incumbent upon the part, while the matter is still fresh in the minds of the judges who have made the record, to make necessary rectification. That is th only way to have the record corrected. It is not open to the appellant to contend before this Court to the contrary. [See State of Maharashtra V. Ramdas Shrinivas Nayak[2], Bhavnagar University v. Palitana Sugar Mill (P) Ltd.[3] and Roop Kumar v. Mohan Thedani[4].]"*

Commissioner of Customs, Mumbai Vs. Bureau Veritas and Others 2005 (3) SCC 265:

> *"14. After having agreed on some point as recorded, it is not open to the appellant to turn around or take a plea that the position is different. If really there was no agreement, the only course open to the appellant was to move the Tribunal in line with what has been said in State of Maharashtra v. Ramdas Shrinivas Nayak[1]. In a recent decision Bhavnagar University v. Palitana Sugar Mill (P) Ltd.[2] the view in the said case was reiterated by observing that the statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call the attention of the very judges who have made the record. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. It is not open to the appellant to contend before this Court to the contrary."*

7. Per contra the counsel for the contesting respondent, who appeared on his own, on a receipt of notice from the counsel for the petitioner, contended that whatever has been recorded in the Judgment is factually correct and there is no warrant or requirement for review nor this Tribunal recorded anything wrongly.

8. During the hearing, the learned counsel for the petitioner submitted his request in the form of a brief note, which reads thus:-

"1. In the 1st sentence in paragraph 8 of the Judgment dated 5.4.2006:

- *Delete the words "in excess" and*
- *Substitute the deleted words with "once again"*

2. In the 2nd sentence in paragraph 8 of the Judgment dated 5.4.2006:

(i) Delete the opening words "There is no dispute that"

(ii) Delete the words "in excess" and substitute in place of these words the phrase "once again"

3. In the last sentence in paragraph 8 of the Judgment dated 5.4.2006:

- *Delete the opening words "There is no dispute that"*

9. During the hearing, we plainly expressed ourselves to the learned counsel that there is neither a misconception nor there is wrong understanding of the fact nor the recording of the facts by us is wrong. The learned counsel appearing for the petitioner fairly stated that what is expressed in the Open Court at the hearing of the Review Petition is not controverted and it is the same stand that is also set out by the advocate in his affidavit. It was pointed out by us that what we have recorded in our Judgment is fair and correct statement of facts as stated by the counsel at the hearing and there is no misconception in what we have recorded in Para 8 of our Judgment.

10. At the hearing to satisfy the learned counsel, Mr. Diwan, we expressed ourselves stating that the matter is fresh in our memory and what we have recorded is correct. We also demonstrated pointing to a glass of water and added that by describing the contents of the glass as "half empty and half full". While the learned senior counsel described the same glass as "half full and half empty". There is no difference at all in the two versions, namely, one by us and the other by the learned counsel for the petitioner. That is what exactly has been set out by us in our Judgment.

12. The learned counsel for the petitioner contended that what we have recorded is erroneous and it has to be reviewed. However, at the time of hearing of Review Petition, it was fairly stated by the learned counsel that amount has been collected once over by the petitioner from the first respondent and there is no dispute as to collection of SLC and SCC once over. That being the factual position, we do not find any reason to review our Judgment.

13. In fact in respect of Para 8 of the Judgment the review is specifically sought for. Para 8 of the Judgment reads thus:-

> *"The learned counsel appearing for the appellant while fairly admitting that the sum of Rs.227.9 lakhs has been collected by the appellant in excess, even amount though the first Respondent had already remitted the SLC and SCC on earlier occasion for the entire contract demand of 90 MVA. There is no dispute that the appellant has collected the amount in excess of what it is entitled towards SLC/ SCC when the first Respondent sought for increase in or restoration of earlier contracted load. Concedingly, on the earlier occasion itself, the first Respondent had remitted the prescribed charges for the contracted loan of 100 MVA. It is true that the first Respondent sought for a reduction of the contracted load by two stages when its industry was not fairing well. Subsequently, the first Respondent moved for an increase in the contracted load and sought for restoration of the load. It is not in dispute that the earlier remittances towards 100 MVA contract load remained with the appellant. When the first Respondent sought for an increase in contracted load admittedly the infrastructure already existed and no additional expenditure has been incurred by the appellant. However, taking advantage of the position of the first Respondent, namely, pressing requirement of power, the appellant managed to collect once over towards SLC/ SCC. There is no dispute that the second time collection of SLC and SCC in illegal, as it is not supported by statutory Terms and Conditions of Supply or by the Board' circular."*

14. According to the learned counsel, Para 8 has to be reviewed by deleting the word "in excess" by substituting the same with "once again", delete the opening words "there is no dispute that" and delete the words "in excess" and substitute the same with the words "once again". The learned counsel seeks for deletion of the words "there is no dispute that". But we do not see any valid or justifiable reason to accept such a request.

15. What was submitted at the time of final hearing before us is still fresh in our memory and what has been recorded by us in our Judgment is fair and correct. There is no doubt in our mind to hold that we have recorded said facts either erroneously or by way of misconception or by way of misunderstanding.

16. Even now, the learned counsel for the petitioner seeks for review while admitting that the petitioner has collected the amounts form the first respondent once over. If that be so, it is a double payment and consequences follow automatically.

17. The review sought for in our view is without merits and deserves to be rejected. We do not find any error apparent on the face of the record warranting a review.

19. It is well settled law that power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. The expression "any other sufficient reason: used in Order 47, Rule 1 CPC means a reason sufficiently analogous to those specified in the said rule. It has been held by the Supreme Court in Ajit Kumar Rath v. State of Orissa, (1999) 9 SCC 596 that any attempt, except an attempt to correct an apparent error on an attempt not based on any ground set out in Order 47 CPC, would amount to an abuse of the liberty given to the Tribunal to review its Judgment. In the said pronouncement, the Supreme Curt held thus:-

> *"Any attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment."*

20. In Moran Mar Basselios Catholicos v. Mar Poulose Anthanasius, reported in AIR 1954 SC 526: (1955) 1 SCR 520, it has been laid down that the misconception of the Court is a sufficient reason analogous to an error on the face of the record. This proposition has been followed in very many pronouncements. None could quarrel with this proposition but we hasten to add that there is no misconception on the part of this Appellate Tribunal with respect to what has been recorded in our Judgment.

21. The contents of Para 8 reflects the correct statement of facts and there is no misconception. Even now, it is admitted that the amount has been collected once over or once again. That being the position, the rest of the contents of Para 8 cannot be concluded as a misconception. At the risk the repetition we record that there is no factual misconception on what we have set out in Para 8 of the Judgment.

22. In fairness to Mr. Diwan, we would also add that what was expressed by us in the Open Court at the time of hearing of review, according to the learned senior counsel is exactly the same what has been set out in the affidavit by the counsel who appeared during the hearing of the appeal.

23. In the light of the above discussions, we are of the considered view that this is not a fit case to seek for review. We also hold that no case is made out for review while stating that what has been recorded by us in our Judgment are correct.

24. In the result, the Review Petition is rejected. With respect to the Interlocutory Application, we hold that there is no delay and, therefore, the application is closed as unnecessary.

Pronounced in open court on this 2nd day of June 2006.

(Mr. H. L. Bajaj)
Technical Member

(Mr. Justice E Padmanabhan)
Judicial Member

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