

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

**Review Petition No. 1 of 2009
In Appeal No. 64 of 2008**

Dated : 24th March, 2009

**Coram : Hon'ble Mrs. Justice Manju Goel, Judicial Member
Hon'ble Mr. A. A. Khan, Technical Member**

1. M/s H. M. Steel Ltd.
Trilokpur Road, Kala Amb,
Distt. Sirmour,
Himachal Pradesh – 173 001
 2. M/s. J. B. Rolling Mills (P) Ltd.
Trilokpur Road, Kala Amb,
Distt. Sirmour,
Himachal Pradesh – 173 001
 3. M/s. Sri Rama Steels Ltd.
Baddi Road, Barotiwala,
Distt. Solan,
Himachal Pradesh – 174 103
- ... Applicant(s)

Versus

1. Himachal Pradesh Electricity Regulatory Commission
Keonthal Commercial Complex,
Khalini,
Shimla – 171 002
Himachal Pradesh
2. Himachal Pradesh State Electricity Board
Vidyut Bhawan,

Shimla – 4
Himachal Pradesh – 171 004

... Respondent(s)

Counsel for the appellant(s) : Mr. P. C. Dewan along with
Mr. Sanjiv Gupta

Counsel for the Respondent(s) :

ORDER

Ms. Justice Manju Goel, Judicial Member

This is a review petition filed by the appellants in appeal No. 64 of 2008 seeking review of the judgment dated 10.12.2008 whereby this Tribunal dismissed the appeal arising out of the tariff order dated 16.04.07 for the tariff year 2007-08 in respect of the distribution tariff of the respondent No.2, namely Himachal Pradesh State Electricity Board. The three appellants/applicants are consumers of electricity from the respondent No.2. They disputed the tariff order in respect of the following points:

- (a) Creation of a Power Intensive Unit (PIU) category for power intensive industry, mainly steel units,
- (b) Higher energy charges for the PIU units and

- (c) Imposition of two part tariff for the peak load exemption charges.

2) This Tribunal has the power to review its decisions under section 120(2) (f) of the Electricity Act 2003. For the purpose of reviewing its own decisions this Tribunal has the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908. In view of this provision, this Tribunal can review its decision only to the extent it can be done by a Civil Court under the Code of Civil Procedure. Accordingly, this Tribunal has to be guided by the principles governing review as available in the Civil Procedure Code. Review under the Civil Procedure Code is permissible under XXXXVII, Rule 1 on the following grounds:

- (a) Discovery of new and important matter or evidence which after exercise of due diligence was not in the knowledge of the applicant and could not be produced by him at the time when the decree or order was passed.
- (b) Some mistake or error apparent on the face of the record and
- (c) For any other sufficient reason

3) The words 'any other sufficient reason' occurring in Rule 1 has to be analogous to the first two grounds. Pleas akin to those which can be taken in appeal cannot be grounds for review. Nor does the applicant seeking review can re-argue the original matter and seek a new judgment. The error in judgment cannot be cured in a review petition. The present applicants have not attempted to show any apparent error in the judgment dated 10.12.08. Instead they allege some errors which may be stated in brief as under:

- (i) **Regarding separate demand charges:** The proposal of the respondent No.2, namely the Himachal Pradesh State Electricity Board, for imposition of two part tariff should have been treated as supplementary or additional filing of ARR and should have been circulated to all stake holders for eliciting their views which was not done. While imposing additional demand charges in the two part tariff, during the peak load hour the demand charge component of the normal tariff should have been reduced proportionately or made applicable on pro rata basis. The impugned order suffers from this error.

(ii) **Regarding separate classification:** Classification of the consumers could be done only as per the provision contained in section 62(3) of the Electricity Act, 2003 whereas the applicants were classified on the basis of the process of the industry which is not permissible under section 62(3) of the Electricity Act, 2003. Therefore, the classification of the appellants into PIU category needs a re-look.

4) The applicants have come out with some arguments to substantiate their claim that these are errors in the judgment dated 10.12.08.

5) As explained above, the scope of review is limited to the grounds mentioned in paragraph 2 above. The applicants do not point out any error apparent. Nor do the applicants make out any other grounds for review. *The review petition is accordingly dismissed in limine.*

(A. A. Khan)
Technical Member

(Justice Manju Goel)
Judicial Member