

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

**Review Petition No. 7 of 2009 in
Appeal No. 85 Of 2007**

Dated : 19th January, 2011

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam,
Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member**

In the matter of:

Orissa Power Transmission Corpn. Ltd.,
Having its Headquarters at
Janpath, Bhubaneswar, Orissa

....Review Petitioner/Appellant

Vs

1. Madhya Pradesh Power Trading Corporation Ltd.,
(Formerly Madhya Pradesh State Electricity Board)
Shakti Bhawan, Rampur, Jabalpur,
Madhya Pradesh.
2. Eastern Regional Power Committee,
(Formerly Eastern Regional Electricity Board),
14, Golf Club Road, Tollygunge,
Kolkata-700 033
3. Grid Corporation of Orissa Ltd. (GRIDCO),
Having its Headquarters at Janpath,
Bhubaneswar, Orissa

... Respondents

Counsel for Review Petitioner: Mr. R.K.Mehta,
Mr.Antaryami Upadhyay,
Mr. S. Lakhi Singh & Ms. Rita

Counsel for Respondent: Mr. Sakesh Kumar & Mr. Manoj Dubey
for R-1

ORDER

Per Hon'ble Shri Rakesh Nath, Technical Member:

1. This Review Petition has been filed by Orissa Power Transmission Corporation Ltd. seeking to review the Judgment dated 8.7.2009 of this Tribunal dismissing the Appeal filed by the Review Petitioner/Appellant challenging the order dated ***23.3.2007*** passed by the Central Electricity Regulatory Commission.

2. The Review Petition has been filed on the ground that the Tribunal has not noticed/considered the submissions contained in paras 6, 9, 10, 25 to 30 of the written submissions and which were duly argued at the time of hearing of the Appeal. Further in para 20 of the Judgment, the Tribunal has relied upon the submissions of MPEB, the Respondent which suffers from error on the face of the record. Reliance has been placed by the

The correction in the date is done and shown in italics and bold as per order dated 31.01.2011 of the Hon'ble Chairperson

. Review Petitioner on the Judgment of the Hon'ble Supreme Court in Indian Charge Chrome Limited Vs. Union of India and others reported in (2005) 4 SCC 67.

3. The learned counsel for Respondent No. 1, MPSEB/MPPTCL has submitted that the impugned Judgment does not suffer from any error apparent on face of record and as such not required to be reviewed. According to him, the Review Petition is not maintainable. He has also referred to the following Judgments of the Hon'ble Supreme Court:

- i) Parsion Devi and others Vs. Sumitri Devi and others (1997) 8 SCC 715
- ii) Ajit Kumar Rath Vs. State of Orissa and others (1999) 9 SCC 596
- iii) State of West Bengal and others Vs. Kamal Sengupta and another (2008) 8 SCC 612

4. We have carefully examined the submissions made by both the parties including the Judgments relied on by them and also heard the learned counsel for the parties.

5. The contentions made by the learned counsel for the Review Petitioner/Appellant regarding non-consideration of submissions and our finding on them are as under:

- i) According to the learned counsel for the Review Petitioner, the contentions in para 9 and 10 of the written submissions that 'contract path' without HVDC could not be taken as 'capable of carrying power' for the purpose of determining wheeling charges has not been considered in the impugned order. Also in view of mutual agreement between GRIDCO and MPEB to accept wheeling charges fixed by CEA, the Petition filed by MPEB is not maintainable. We, however, find that these aspects have been dealt with in paras 7,8 and 11 to 15 of the impugned Judgment.
- ii) According to the Review Petitioner, the contentions in para 25 to 30 of the written submissions that it

was a case of islanding and not wheeling and as such determination of wheeling charges on the basis of Regulation 4.9.2 can not be sustained. We find that the Tribunal has after clearly describing the arrangements for transfer of power to MP and relevant Regulations has upheld the order of the Central Commission. We feel that it is not necessary for the Appellate Authority to mention in verbatim all the contention of the contesting parties.

- iii) According to the learned counsel for the Review Petitioner, the submissions made by MPEB recorded in para 20 of the Judgment that there was improvement in PLF of Ib TPS suffers from error of record. This issue has been dealt with in paras 20 and 21 of the Judgment and we do not find any error apparent on the face of the record.

6. Thus, we find that submissions made by the Review Petitioner/Appellant have been duly considered by the Tribunal

in the impugned judgment. We do not find any error apparent on the face of the record in the impugned Judgment. We find that the Review Petitioner in the guise of the Review Petition has requested for reconsideration of the whole issue afresh by making the same submissions which were presented before the Tribunal in the main Appeal, which is not permissible under law. In view of this, we do not find any substance in the Review Petition. Accordingly, the Review Petition is dismissed. No order as to costs.

7. Pronounced in the open court on this
19th day of January, 2011.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

REPORTABLE / NON-REPORTABLE

VS