

Record of proceedings dated 07.07.2021

Case No.	Name of the Petitioner(s)	Name of the Respondent(s)
R. P. (SR) No. 4 of 2019 in O. P. No. 8 of 2017 & I. A. No. 8 of 2021	M/s. Shree Cement Limited	TSSPDCL & Vedanta Limited (Previously known as Sesa Sterlite Limited)

Review petition filed seeking review of the order dated 01.11.2018 passed in O. P. No. 8 of 2017

I. A. filed seeking amendment in the prayer of the review petition.

Sri. Koushik Soni, Advocate representing Sri P. Vikram, Advocate for the review petitioner, Sri D. N. Sarma, OSD (Legal & Commercial) alongwith Sri Mohammad Bande Ali, Law Attachee for respondent No. 1 and Sri Hemanth Singh, Sri Lakshyajit Singh Bagwal and Sri Harshit Singh, Advocates for the respondent No. 2 have appeared through video conference. The representative of the respondent No. 1 stated that the respondent has objection to the amendment application. He stated that the review petition had been filed in the year 2019 and after two and half years, this amendment has been brought in, stating that there is a typographical error in name the respondent in the prayer and also in the contents of the review petition. The respondent will be highly prejudiced, if the amendment application is allowed. He sought to rely on the judgments of the Hon'ble Supreme Court as also the observations in a recent judgment using legal maxim. It is his case that the petitioner, who is not vigilant, cannot claim the relief including that of review. Based on the judgment of the Hon'ble Supreme Court, it cannot be said that the submission of the review petitioner in the present application for amendment of prayer in the review petition constitutes a typographical error. Therefore, this application may be refused and consequently the review petition may be dismissed.

The advocate representing the counsel for petitioner stated that he needs time to submit contra judgments as also to make further submissions in the matter. Considering the fresh submissions and as the counsel for the petitioner is unable to appear and make submissions due to his presence in another court as reported, the matter is adjourned.

Call on 29.07.2021 at 11.30 A.M.

Sd/-
Member

Sd/-
Member

Sd/-
Chairman

Case No.	Name of the Petitioner(s)	Name of the Respondent(s)
O. P. No. 2 of 2020	M/s. Tejas India Solar Energy Private Limited	TSSPDCL & TSTRANSCO

Petition filed seeking directions to the respondents to synchronize the plant and consequently grant long term open access permission.

Sri. Koushik Soni, Advocate representing Sri P. Vikram, Advocate for petitioner and Sri Mohammad Bande Ali, Law Attachee for respondents have appeared through video conference. The advocate representing the counsel for petitioner sought further adjournment of the matter, due to preoccupation of the counsel for petitioner in another court. The Commission pointed out that the matter was adjourned on the understanding that it will be heard finally. However, in view of the request made by the advocate representing the counsel for the petitioner, the matter is adjourned. The Commission made it clear that no further adjournment for any reason will be considered.

Call on 29.07.2021 at 11.30 A.M.

Sd/-
Member

Sd/-
Member

Sd/-
Chairman

Case No.	Name of the Petitioner(s)	Name of the Respondent(s)
O. P. No. 6 of 2020	M/s. Satec Envir Engineering (India) Private Limited	TSSPDCL & Spl. Chief Secretary, Energy Department

Petition filed seeking extension of SCOD and granting time for completing the project.

Sri. P. Srinivasa Rao, Advocate for the petitioner and Sri Mohammad Bande Ali, Law Attachee for respondents have appeared through video conference. The counsel for petitioner stated that the arguments in the case relating to facts have been concluded. On the last occasion, he sought time for enabling service of the judgments relied upon by him to the respondents and placing the same on the file of the Commission. Now they have been served and placed on the file of the Commission. He has relied on the judgments filed in the memo dated 28.06.2021 and explained the contents thereof by reading the relevant paragraphs in the said judgments. The import of the judgment is that 1966 judgment is on the issue of service of notice while the judgments of 2011 and 2018 are relating to contradictory stands taken by a party in a proceeding. It is his case that a party may change its contention in different proceedings but cannot approbate and reprobate in one proceeding itself. The attendant facts and events in this case show the same about the action of the respondents in this case. It is also his case that service of notice as explained above have been clearly decided by the Hon'ble Supreme Court and in the instant case the respondents have not followed the same.

The representative of the respondents stated that the matter involves extension of SCOD of the project. The petitioner did not complete the project in time. Also the petitioner changed the address for communication, but did not care to inform the DISCOM, which is a party to the agreement. He pointed out the relevant letters, which were sent to the known address of the petitioner. The same have been served and acknowledgment is received as has been filed before the Commission. At this stage, the Commission pointed out that the matter is heard as regards the facts of the case already and the arguments should be limited to service of notice only.

The representative of the respondents stated that the service of notice is provided in the Act, 2003 itself and readout the provision. It is stated that the respondents have adopted the method of service as enumerated in the Act, 2003. He relied on a judgment of the Hon'ble Supreme Court reported in AIR 1981 SC 1234, which mandated that service of notice has to be interpreted in terms of the provisions contained in the relevant statute and for that purpose section 27 of the General Clauses Act is relevant. Reliance is placed on section 114 of the Evidence

Act also to state that service of notice is complete when acknowledgment of post is received. The representative of the respondents further relied on clause 10.3 of the PPA that termination notice is to be given 60 days before actual termination of the agreement and the respondents have given more than that time before actually terminating the agreement. Encashment of BGs as submitted by the counsel for petitioner is the consequence of termination of agreement. Therefore, the Commission may not grant any relief to the petitioner.

The counsel for petitioner stated that the Commission may consider the balance of convenience as also the huge investments made by the petitioner to the project. The Commission had already considered extension of SCOD in several cases as recently as in the month of March, 2021 also, which is cited by him. The petitioner may not be put to any hardship in refusing the relief, as the investments are made based on financial borrowing with the banks. The counsel for petitioner stated that the matter may be considered favourably.

Having heard the arguments of the parties, the matter is reserved for orders.

Sd/-
Member

Sd/-
Member

Sd/-
Chairman

