



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION**  
5<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500 004

**R. P. (SR) No. 4 of 2019**

**&**

**I. A. No. 8 of 2021**

**in**

**O. P. No. 8 of 2017**

**Dated 08.03.2022**

**Present**

Sri T. Sriranga Rao, Chairman  
Sri M. D. Manohar Raju, Member (Technical)  
Sri Bandaru Krishnaiah, Member (Finance)

Between:

M/s Shree Cement Limited,  
114 Hans Bhawan, 1-Bahadur Shah Zafar Marg,  
New Delhi – 110 002.

... Review petitioner/Petitioner

**AND**

1. Southern Power Distribution Company of Telangana Limited,  
Corporate Office, # 6-1-50,  
Mint Compound, Hyderabad – 500 063.
2. Vedanta Limited (Previously known as Sesa Sterlite Limited),  
Banjari Village, P.O. Sripura,  
Dist. Jharsuguda, Odisha – 786 202. ... Respondents/Respondents

The review petition came up for virtual hearing through video conference on 15.02.2021, 22.02.2021, 18.03.2021, 02.06.2021, 16.06.2021, 28.06.2021, 07.07.2021 and 29.07.2021. The appearance of Advocate/representative of the Review Petitioner, Respondent No.1 and Respondent No.2 is as given below:

Date	Review Petitioner	Respondent No.1	Respondent No.2
15-Feb-2021	Sri M.Abhinay Reddy, Advocate representing Sri P.Vikram, Advocate	Sri Mohammad Bande Ali, Law Attaché	Sri Lakshyajit Singh Bagwal, Advocate

<b>Date</b>	<b>Review Petitioner</b>	<b>Respondent No.1</b>	<b>Respondent No.2</b>
22-Feb-2021	Sri P.Vikram, Advocate	Sri D.N.Sarma, OSD (Legal & Commercial)	Sri Hemanth Singh, Advocate
18-Mar-2021	Sri M.Abhinay Reddy, Advocate representing Sri P.Vikram, Advocate	Sri D.N.Sarma, OSD (Legal & Commercial)	Sri Lakshyajit Singh Bagwal, Advocate
02-Jun-2021	Sri M.Abhinay Reddy, Advocate representing Sri P.Vikram, Advocate	Sri D.N.Sarma, OSD (Legal & Commercial)	Sri Lakshyajit Singh Bagwal, Advocate
16-Jun-2021	Sri P.Vikram, Advocate	Sri D.N.Sarma, OSD (Legal & Commercial) along with Sri Mohammad Bande Ali, Law Attaché	Sri Hemanth Singh, Advocate, along with Advocates Sri Lakshyajit Singh Bagwal, Sri Harshit Singh and Miss Shreya Sanal
28-Jun-2021	Sri M.Abhinay Reddy, Advocate representing Sri P.Vikram, Advocate	Sri D.N.Sarma, OSD (Legal & Commercial) along with Sri Mohammad Bande Ali, Law Attaché	Sri Hemanth Singh, Advocate
07-Jul-2021	Sri Koushik Soni, Advocate representing Sri P.Vikram, Advocate	Sri D.N.Sarma, OSD (Legal & Commercial) along with Sri Mohammad Bande Ali, Law Attaché	Sri Hemanth Singh, Advocate along with Advocates Sri Lakshyajit Singh Bagwal and Sri Harshit Singh
29-Jul-2021	Sri P.Vikram, Advocate	Sri D.N.Sarma, OSD (Legal & Commercial) along with Sri Mohammad Bande Ali, Law Attaché	Sri Hemanth Singh, Advocate

Having been heard and having stood over for consideration to this day, the Commission passed the following:

### ORDER

The review petitioner (original petitioner) has filed review petition under section 94 (1) (f) of the Electricity Act, 2003 (Act, 2003) to a limited extent seeking the review of the finding in para 21 [item No. (i)] read with direction in para 24 (b) of the order dated 01.11.2018 in O. P. No. 8 of 2017 and the averments in the review petition are mentioned below:

- a. The review petitioner stated that it is a company registered under the Companies Act, 1956 and is engaged in the business of manufacture of cement as also in the business of trading of electricity under the Act, 2003. It is a licenced interstate trader under a Licence No. 45 / Trading / CERC dated 16.03.2010 issued by the Central Electricity Regulatory Commission (CERC).
- b. The review petitioner stated that present review petition is filed limited to the finding in para 21 [item No. (i)] read with direction in para 24 (b) of the final order dated 01.11.2018 in O. P. No. 8 of 2017.
- c. The review petitioner stated that the claim in respect of this item is pleaded in para 9 of the petition, as under:
  - "9. The details of the MTOA dispute are as under:
    - (i) Pursuant to the PPA, SCL vide its letter dated 29.10.2014 applied for grant of MTOA for supply of power from SSL to TSSPDCL.
    - (ii) On 10.12.2014, Power Grid Corporation of India Limited (PGCIL) rejected the MTOA application.
    - (iii) On 30.04.2015, on request of SSL, SCL once again applied for MTOA for supply of 300 MW of power from SSL to TSSPDCL. The supply was proposed during the period October 2015 to May 2016.
    - (iv) On 08.06.2015 the MTOA application was again rejected.
    - (v) Between May 2015 to March 2016, power was supplied by SSL to TSSPDCL through STOA.
    - (vi) However, on 10.09.2015, PGCIL granted the MTOA under application dated 29.10.2014 for the period commencing

from 29.05.2015 upto various dates for varying capacities as mentioned therein.

- (vii) On 04.03.2016, PGCIL intimated that the MTOA has operationalized. In terms thereof, from 01.04.2016 to 26.05.2016 about 62 MW of power was supplied to TSSPDCL from SSL.

First Claim:

(a) During this period despite the Transmission Corridor having been booked for the entire OA capacity permitted, TSSPDCL on several occasions revised the schedule and reduced the quantity of power procured. Also many times, the Regional Load Despatch Centre (RLDC) curtailed the schedule of supply.

(b) Hence in terms of clause 3.10 of the PPA, TSSPDCL is liable to pay the entire cost on account of such reduction & curtailment. The total amount of POC charges for the said quantum is Rs. 23,75,082/-. However, TSSPDCL has only paid some amount of the same being Rs.11,87,541.

(c) Hence, in terms of clause 3.10 of the PPA, TSSPDCL is liable to pay SCL the balance amounting to Rs. 11,87,541/.

... ..”

- d. The review petitioner stated that the reply filed by the Respondent No.1 [TSSPDCL] does not deal with the aforesaid issue or contention at all.
- e. It is stated that the petitioner specifically argued the aforesaid contentions before this Commission. After the conclusion of arguments, the petitioner filed its written submissions, in which it had reiterated the following contentions:

“First Claim:

(a) During this period, despite the Transmission Corridor having been booked for the entire OA capacity permitted, TSSPDCL on several occasions revised the schedule and reduced the

quantity of power procured. Also many times, the Regional Load Despatch Centre (RLDC) curtailed the schedule of supply. None of these averments are denied by the DISCOMs in their reply. These facts are deemed to be admitted by the DISCOMs.

- (b) The present claim is completely covered by clause 3.10 of the PPA which reads as under:

“... .. In case of revision/cancellation of MTOA/STOA, the party seeking revision/cancellation of MTOA / STOA shall bear the entire cost on its account due to such revision/cancellation of MTOA / STOA as per applicable CERC Regulations for MTOA/STOA.”

- (c) Hence in terms of clause 3.10 of the PPA, TSSPDCL is liable to pay the entire cost on account of such reduction & curtailment. The total amount of POC charges for the said quantum is Rs. 23,75,082/-. However, TSSPDCL has only paid some amount of the same being Rs.11,87,541.

- (d) Hence, in terms of clause 3.10 of the PPA, TSSPDCL is liable to pay SCL the balance amounting to Rs.11,87,541.”  
... ..”

- f. The review petitioner stated that TSSPDCL has not served any written submissions which may have been filed by them after the conclusion of hearings.

- g. The review petitioner stated that in the final order under review, the aforesaid argument has also been recorded in para 17 of the order which reads as under:

“17. **Issue-I**: There is no dispute regarding sharing of PoC charges in this matter as per the terms of PPA dated 29.10.2014. Still the dispute arose regarding payment of Point of connection (PoC) charges. The petitioner claims that there are two sets of disputes regarding MTOA and STOA. The first claim is regarding transmission corridor capacity booked by the petitioner not being fully utilized and on the other hand the R-1 revised the schedule and reduced the quantity of power procured several times. Further, RLDC curtailed the schedule of

supply relating to MTOA and as per clause 3.10 of PPA, the R-1 is liable to pay the entire cost on account of reduction and curtailment and PoC charges quantified at Rs. 23,75,082/-. The petitioner claims that R-1 paid only Rs.11,87,541/- though R-1 is liable to pay the balance amount.

... ..”

h. The review petitioner stated that however despite the above arguments, the Commission was pleased to hold as under in para 21 as under:

“21. **In Item (i):** which is mentioned as first claim in the petition, the petitioner alleged that the total amount of PoC charges Rs. 23,75,082/- under MTOA should be borne by the DISCOM. The petitioner justified this claim on the ground that the 3<sup>rd</sup> amendment to sharing of interstate transmission charges and losses regulations, 2015 merged PoC injection charges with PoC withdrawal charges. The DISCOM had paid Rs. 11,87,541/- towards 50% of its share the material on record shows. The petitioner is demanding DISCOM to pay balance 50% of PoC charges along with interest @ 18% per annum in the present petition. As discussed supra, based on the terms of PPA dated 29.10.2014 it is the petitioner who has to bear 50% of PoC charges. R-1 had admittedly paid 50% of the balance. Thus, it is the petitioner who has to bear Rs.11,87,541/- towards its 50% liability. Since the DISCOM had already paid its 50% share on item-II, the petitioner is not entitled to any amount including interest from the R-1/DISCOM.

... ..”

h. The review petitioner stated that it is seeking a review of the said paragraph 21, on the following amongst, other grounds –

- i. The said finding is clearly an error apparent on the face of the record.
- ii. There is no question of sharing the PoC charges as far as claim I is concerned. The only question is of the applicability and application of clause 3.10 of the PPA which reads as under:

“... .. In case of revision/cancellation of MTOA / STOA, the party seeking revision/cancellation of MTOA / STOA shall bear the entire cost on its account due to such revision/cancellation of MTOA / STOA as per applicable CERC Regulations for MTOA / STOA.”

- iii. The contentions of the petitioner insofar as regards the revision of the open access schedules have never been denied by the respondent No.1. Hence the claim ought to have been allowed as it stood.
- iv. The TSSPDCL had never challenged any of the contents of Annexures 12 and 13 of the claim which clearly shows the revision of the OA schedules by the TSSPDCL. Hence there has never been any dispute on facts.
- v. In the face of the said clause of the PPA, there is no question of sharing of the PoC charges etc. or the application of the CERC Sharing Regulations mentioned in the Order.
- vi. In point of fact even in claim(iii), which is on the same basis as claim (i), this Commission has held, as under in para 23:

“23. The petitioner claimed an amount of Rs.53,10,342/- on account of full PoC charges for the reduction and curtailment in procured quantum through STOA with interest. Article 3.10 of PPA dated 29.10.2014 contemplates that Telangana SLDC shall intimate one day in advance regarding any backing down to all the generators as provided in the LOI conditions. In case of revision / cancellation of MTOA/STOA, the party seeking revision /cancellation of MTOA/STOA shall bear the entire cost on its account due to such revision/cancellation of MTOA / STOA as per the applicable CERC regulations for MTOA / STOA. Revision of schedules by Telangana SLDC should be firm and intimated well in advance so as to allow SCL to communicate to SSL.

This article contemplates payment of entire cost by the party seeking revision/cancellation of MTOA/STOA. The material placed on record shows that in some cases it was the DISCOM which reduced the quantum and in some cases, it was the RLDC which reduced the quantum of MTOA / STOA.”

- vii. The aforesaid finding also clearly uses the expression “... .. *reduced the quantum of MTOA/STOA.*” Hence, claim I is completely covered by the “*reduction of quantum of MTOA*”. Therefore, the finding on claim(iii) will completely cover claim(i) as well.
- viii. The TSSPDCL has never argued in the hearing before the Commission that claim(i) was covered by the CERC Sharing Regulations. TSSPDCL had also never argued or ever urged that it had not revised the schedules in MTOA.
- ix. Claim (i) ought to have been allowed in-toto and the finding on claim (i) is vitiated by an error apparent on the face of the record.
- i. The review petitioner stated that the present review is being preferred limited to the aforesaid issue only and is without prejudice to the rights, contentions of the review petitioner with regard to the other portions of the said final order which the review/original petitioner would be able to raise only upon disposal of the present review.

2. Therefore, the review petitioner has sought the following relief in the review petition –

“To review the order dated 01.11.2018 in O.P.No.8 of 2017 to the extent mentioned above and to allow the claim(i) of the petitioner against the respondent No.2”.

3. The respondent No. 2 has filed counter affidavit and the averments of it are as mentioned below.

- a. The respondent No.2 at the very outset denies and disputes in totality all the averments made by the review petitioner in its reply, in the

manner alleged or at all. The denial may be treated as specific and in seriatim, save and except what has been specifically admitted to in the present reply, as the case may be. The respondent No.2 craves leave of the Commission to make further/additional submissions at the time of hearing of the captioned review petition.

b. It is stated that in the present review petition, the review petitioner has sought for the following reliefs:

- "a) Review the order dated 01.11.2018 in Petition O.P.No.8 of 2017;
- b) Allow claim(i) of the petitioner against Respondent No.2;
- c) Pass such further or other orders as may be deemed, just, fit and necessary in the circumstances of the case."

From the above, it is clear that review petitioner vide the present review petition is seeking a prayer against the Respondent No.2, herein.

c. It is stated that the present review petition is "not at all maintainable" against the respondent No. 2 on account of the fact that, the Commission in the impugned order dated 01.11.2018, while framing an issue as to whether it has the jurisdiction to decide the dispute between review petitioner and the respondent No. 2, categorically held that it does not have the jurisdiction to decide the same. The relevant extract of the impugned order is set-out herein below:

"7. The issues to be decided based on the record, facts and contentions are as follows:

... ..

- (ii) Whether the Commission has the jurisdiction to decide the dispute between the petitioner and the 2<sup>nd</sup> respondent on the ground of the two PPAs being back-to-back contracts contrary to terms of PPAs entered between the parties?

... ..

16. In view of the aforementioned discussion, the decision of APTEL New Delhi dated 31.08.2016 in PTC India Ltd vs Uttarakhand ERC and Ors to the effect that the PPA between Swasti Hydro power generator and PTC (power trader), PTC

entered into power sale agreement with beneficiary states/ licensees. The APTEL held that both the contracts are back-to-back arrangements and therefore the Commission has jurisdiction to decide the dispute between them. It is to be noted that in the decision nowhere there is any mention about any specific clause relating to jurisdiction of courts agreed by the power generating company or a trader in case of any dispute relating to the contract, Thus, the said decision has no application to the present dispute between the Petitioner and R-1 being agitated under S. 86(1)(1) of EA, 2003, which contemplates resolution of dispute between the generator and licensees only and the petitioner as a trader representing the Generator as a middleman entered into for a contract not as an Agent for a Principal but as an interstate trading Licensee with the DISCOM under a PPA dt 29.10.2014. This is particularly so because the generator (R-2) has no contract with the Licensee (R-1) for supply of power. Thus, the contention of R2 that it has no privity of contract with R-1 is tenable. In view of the aforementioned reasons and in terms of Articles 3.15 & 3.17 of PPA dated 29.10.2014, the petitioner has to approach the appropriate forum to resolve the dispute between the petitioner and R-2. The issue no.2 is answered accordingly.”

Therefore, once the Commission has specifically held that it cannot decide a dispute between the review petitioner and the respondent No.2, there exists no rhyme or reason for review petitioner to again approach the Commission by way the present review petition and seek a prayer against the respondent No.2 more particularly when the aforesaid finding of the Commission in the impugned order has not even been made a subject matter of review.

- d. It is stated that the review petitioner has not challenged the finding of the Commission in the impugned order qua the issue of jurisdiction. Having accepted the said finding that the Commission does not have jurisdiction to decide the present dispute, the review petitioner cannot

file a review petition based on the merits of the case. On account of the said incurable defect, the review petition is required to be dismissed.

- e. Without prejudice to the above, it is stated that the scope of a review petition is extremely narrow, and that a review petition cannot be an appeal in disguise. In this context, reference be made to Section 94(1)(f) of the Act, 2003, which is *set-out hereinbelow*:

"Section 94. Powers of Appropriate Commission. - (1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:-

... ..

(f) reviewing its decisions, directions and orders;

... .."

From the aforesaid, it is evident that as far as review proceedings are concerned, the provisions of Civil Procedure Code, 1908 (CPC) would be applicable.

- f. Order 47 Rule 1 of the CPC provides the procedure which is required to be followed for adjudicating review petitions. The said provision is reproduced hereinbelow:

"1. Application for review of judgment. —

(1) Any person considering himself aggrieved —

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
- (b) by a decree or order from which no appeal is allowed; or
- (c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent

on the face of the record for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

- (2) A party who is not appearing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court, the case on which he applied for the review.

[Explanation:-The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]"

From the above, the following principles are crystallized:

- a. The scope of review is extremely limited;
- b. A review can be filed only upon discovery of new or important matter or evidence, which could not be produced during the time of passage of an order, despite due diligence;
- c. A review can also be filed if there is a mistake or error apparent on the face of record;
- d. A review can also be filed for any other sufficient reason, as per the discretion of the Court;
- e. As per Rule 1(2) of Order 47, no review is maintainable in the event an appeal is filed by any party wherein the issue raised in the review can be agitated in the appellate forum;

- g. The respondent No. 2 stated that further reference be made to clause 32 (2) read with clause 9(3) of the TSERC (Conduct of Business) Regulations, 2015 which is also set-out hereinbelow:

"32. Review of the decisions, directions, and orders:

(1) ... ..

(2) An application for such review shall be filed in the same manner as a petition under Chapter II of these Regulations.

(3) ... ..

9. Proceedings, etc., before the Commission:

... ..

(3) All proceedings before the Commission shall be deemed to be judicial proceedings within the meaning of Section 193 and 228 of the Indian Penal Code (45 of 1860) and the Commission shall be deemed to be a Civil Court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974)."

From the aforesaid, it is evident that the regulation of the Commission, qua conducting review proceedings, are based on the same principles as are provided under the CPC.

- h. The respondent No.2 stated that on account of the aforesaid, it is clear that the review jurisdiction is extremely narrow and is restricted in terms provided under Order 47 of the CPC. In order to entertain a review petition, it is necessary to point out an error which is apparent on the face of record. In the entire review petition, there is no reasoning provided as to how the impugned order is an error apparent on record. It is further stated that a review petition cannot be a rehearing of the entire issue on merits. In this context, reference be made to the following judgments of the Hon'ble Supreme Court:

- i) Parsion Devi and Others v. Sumitri Devi and Others, reported in (1997) 5 SCC 715, whereby the Hon'ble Supreme Court made the following broad observations:

"9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise."

ii) Kamlesh Verma v. Mayawati, reported in (2013) 8 SCC 320, wherein the Hon'ble Supreme Court has held as hereunder:

"15. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. This Court in Parsion Devi v. Sumitri Devi [(1997) 8 SCC 715] held as under: (SCC pp. 718-19, paras 7-9)

"7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In Thungabhadra Industries Ltd. v. Govt. of AP. [AIR 1964 SC 1372] this Court opined: (AIR p. 1377, para 11)

11. What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an "error apparent on the face of the record".

The fact that on the earlier occasion the court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an "error apparent on the face of the record", for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.'

8. Again, in *Meera Bhanja v. Nirmzla Kumar Choudhury* [(1995) 1 SCC 170] while quoting with approval a passage from *Aribarn Tuleshwar Sharma v. Aribam Pishak Sharme* [(1979) 4 SCC 389] this Court once again held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be

'reheard and corrected'. A review petition, it must be remembered has a limited purpose and cannot be allowed to be 'an appeal in disguise'.

On account of the principles hereinabove, the present review petition, being nothing but an appeal in disguise, has to be rejected at the very threshold.

- i. It is reiterated that review petitioner has not challenged the impugned order before the Appellate Authority on issue of jurisdiction as decided by the Commission. In fact, the review petitioner acceded to the findings of the impugned order, as subsequent to the aforesaid impugned order, the review petitioner approached the Hon'ble High Court of Delhi, by way of filing an arbitration petition being Arbitration Petition No.788 of 2019 on 27.08.2019 seeking the appointment of a sole arbitrator. The Hon'ble High Court of Delhi vide its order dated 04.12.2019 directed the petitioner to approach the Ld. Central Electricity Regulatory Commission (CERC) in terms of Section 79 (1) (f) of the Act, 2003, for the appointment of Arbitrator. Subsequently, complying with the aforesaid directions of the Hon'ble Delhi High Court, the petitioner then approached the Ld. CERC by filing a petition, being Petition No.162 / MP / 2020, which is pending adjudication. Hence, the issue relating to payment of POC charges is pending adjudication and is sub judice before the CERC.
- j. The respondent No. 2 stated that it is evidently clear that the actions of the review petitioner itself show that it has acceded and accepted the findings of the Commission qua the issue of jurisdiction, for adjudication of any alleged dispute against the respondent No.2. Since, the issue of jurisdiction has not been challenged in the review petition filed by the review petitioner, the said findings have attained finality, and that the present review petition has to be dismissed on this count, alone.
- k. The respondent No. 2 stated that without prejudice to the above, even otherwise, the present review petition has no merit, since in the entire pleadings, the review petitioner has not made out any case against the respondent No.2. In fact, from a perusal of the entire review petition,

including the grounds of the same, the review petitioner is agitating a dispute only against the TSSPDCL. The relevant portion relied upon by the respondent is extracted elsewhere in this order [page 3 of 30, 9(vii)(a) starting from First Claim].

- l. The respondent No. 2 stated that there is no question of sharing the POC charges as far as claim 1 is concerned. The only question is of the applicability and application of clause 3.10 of the PPA which reads as under:

“... .. In case of revision/cancellation of MTOA / STOA, the party seeking revision/cancellation of MTOA / STOA shall bear the entire cost on its account due to such revision/cancellation of MTOA / STOA as per applicable CERC Regulations for MTOA / STOA.”

- m. It is stated that the contentions of the review petitioner insofar as regards the revision of the open access schedules have never been denied by the respondent No.1. Hence the claim ought to have been allowed as it stood.
- n. It is stated that the TSSPDCL had never challenged any of the contents of annexures 12 and 13 of the claim which clearly shows the revision of the OA schedules by the TSSPDCL. Hence there has never been any dispute on facts.
- o. It is stated that in the face of the said clause of the PPA, there is no question of sharing of the POC charges etc. or the application of the CERC Sharing Regulations mentioned in the order.
- p. It is stated that in point of fact even in claim(iii), which is on the same basis as claim (i), the Commission has held, as under in para 23:- ... ..
- q. It is stated that the aforesaid finding also clearly uses the expression "... .. reduced the quantum of MTOA/STOA. ... ..". Hence, claim 1 is completely covered by the "reduction of quantum of MTOA". Therefore, the finding on claim(iii) will completely cover claim(i) as well.
- r. It is stated that the TSSPDCL has never argued in the hearing before the Commission that claim(i) was covered by the CERC Sharing Regulations. TSSPDCL had also never argued or ever urged that it had not revised the schedules in MTOA.

- s. It is therefore stated that claim(i) ought to have been allowed in toto and the finding on claim(i) is vitiated by an error apparent on the face of the record.
- t. Therefore, in terms of the aforementioned, it gives a clear understanding that the petitioner, under the present review petition, is agitating/pleading a dispute against the respondent No.1/TSSPDCL only to pay the balance amount of POC charges. There is not even a single ground or a pleading against the answering respondent to pay such charges.
- u. It is stated that in view of the above, when the entire submissions made by the review petitioner is against the respondent No.1/TSSPDCL, then it cannot seek a relief from the respondent No.2. To expand this contention, reliance is placed on the judgment of the Hon'ble Supreme Court titled as *Ram Sarup Gupta v. Bishun Narain Inter College & Ors. reported in (1987) 2 SCC 555*. The relevant extract of the judgment is set-out herein below:
- "6. ....
- It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party know the case it has to meet. In order to have a fair trial it is imperative that the party should settle the essential material facts so that the other party may not be taken by surprise. The pleadings however should receive a liberal construction; no pedantic approach should be adopted to defeat justice on hair-splitting technicalities. Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law. In such a case it is the duty of the court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered."
- v. It is stated that in view of the above submissions and the decisions rendered by the Apex Court, the present review petition ought to be dismissed by the Commission.

- w. The respondent No.2 stated that the contents of para 4 to 8 of the review petition are disputed and hence denied to the extent the same are contrary to the considered stand of the respondent No.2. Without prejudice to the foregoing submissions, as made in the preliminary objections and submissions, as per Article 3,10 of the PPA dated 31.10.2014 in case of a revision/cancellation in the MTOA/STOA, the review petitioner seeking such revision, will be liable to pay the entire cost of such revision/ cancellation, as per the applicable regulations of the Ld. CERC. Therefore, as evident from the pleadings of the review petitioner, there was no such revision/cancellation of the part of the respondent No.2 and that such revision/cancellation was done by the respondent No.1. Therefore, when there is no role of the respondent No.2 in giving instructions for revision/cancellation of MTOA/STOA, then no relief/ compensation can be claimed from the respondent No.2.
- x. It is stated that the contents of para 9 to 13 of the review petition are disputed and hence denied to the extent the same are contrary to the considered stand of the respondent No.2 in the present reply. In this context, reference is made to paras 3 to 13 of the present reply, the contents of which are not being repeated herein for the sake of brevity.
- y. The respondent No.2 stated that in the light of the submissions made by the respondent No.2 in the counter affidavit, the review petition filed by the review petitioner does not warrant any consideration of the Commission and is liable to be dismissed.

4. The respondent No. 1 has filed written submissions on maintainability of Review Petition as under:

- a. It is stated that during the virtual hearing held on 16.06.2021 in the subject review petition, the petitioner has admitted that his claim in the prayer was wrongly made against the respondent No.2 instead of respondent No. 1, stating it as a mistake/typographical error and sought the Commission to treat the claim against respondent No.1. The Commission directed the petitioner to file a memo in this regard.
- b. Adverting to the plea made by the petitioner to treat the claim against the respondent No. 1, the 1<sup>st</sup> respondent raised objection and

submitted to the Commission that, the review petition cannot be allowed for adjudication without amending the prayer in the review petition as per the case Law of Hon'ble Supreme Court in 1953 AIR SC 235 (TROJAN & Co Ltd. vs. R M.N.N. Nagappa dated 20.03.1953), wherein (at page-10 last two lines) it was held that

“ ... ..

It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the Court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case. ... .. ”

- c. The 1<sup>st</sup> respondent further stated that even the amendment of prayer / pleadings, if sought by the petitioner at this belated stage, is not maintainable as it would be barred by limitation since the review petition was filed on 19.01.2019 before the Commission, together with a sworn, signed affidavit along with a verification petition and any amendment of the prayer/pleadings in the review petition at this belated stage cannot relate back to the date of filing of the review petition but is to relate to the date of filing of the amendment application as per the ratio decidendi in the Case Law in the matter of Vishwambhar vs. Laxminarayan 2001 (6) SCC 163 (Page No.4 -1<sup>st</sup> para) as extracted below:

“ ... ..

Regarding the suit filed by Vishvambhar it was filed within prescribed period of limitation but without the prayer for setting aside the sale deeds. Since the claim for recovery of possession the properties alienated could not have been made without setting aside the sale deeds the suit as initially filed was not maintainable. By the date the defect was rectified (December, 1985) introducing such a prayer by amendment of the plaint prescribed period of limitation for seeking such a relief had elapsed. In the circumstances the amendment of the plaint could not come to the rescue of the plaintiff. ... .. ”

- d. Applying the aforesaid ratio, the review petition is deemed to be filed on the date of filing of amendment application, which would be beyond the 105 days (75 days + additional 30 days) stipulated for filing the review petition in terms of the TSERC Business Conduct Regulations, 2015 and therefore the amended review petition would be barred by limitation, hence not maintainable.
- e. It is further stated that Hon'ble Supreme Court in the case of *Revaieetu Builders and Developers vs. Narayanaswamy and Sons & others* 2009 (10) SCC 84 at para 67 of its judgment, while discussing on Order VI Rule 17, Amendment of Pleadings of CPC 1908, held as extracted below:

“ ... ..

*FACTORS TO BE TAKEN INTO CONSIDERATION WHILE DEALING WITH APPLICATIONS FOR AMENDMENTS*

67. *On critically analyzing both the English and India cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.*

1. ... ..

2. ... ..

3. *The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money.*

4. ... ..

5. ... ..

6. *As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application. ... ..*

- f. It is stated that as could be seen from the principles of above case law, if the Commission permits an amendment of prayer in the review petition at this belated stage, then it would cause prejudice to the 1<sup>st</sup> respondent since there is no due diligence on the part of the petitioner to amend the prayer even after two years of filing the review petition

and also after commencement of proceedings review petition till the respondent No. 2 disputed the claim against it, hence it attracts law of limitation, thereby rendering the petitioner's review petition as time barred. Further, the Hon'ble Apex Court also held that the Courts should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application. As such, the Commission is required to disallow any amendment of prayer at this belated stage and hence it is prayed not to condone the abnormal delay in seeking the amendment by the Petitioner.

- g. It is stated that the 1st respondent further submits that regarding the plea of the petitioner that "it is a typographical error" is also not sustainable in terms of the case law of Apex Court in (2012) 2 SCC 300 (*J. Samuel and Others. Vs. Gattu Mahesh and others, Civil Appeal 561 of 2012*), wherein the Apex Court elaborately discussed on the typographical error and due diligence as extracted below:

".....

14. A party requesting a relief stemming out of claim is required to exercise due diligence and is a requirement which cannot be dispensed with. The term "diligence" determines the scope of a party's constructive the suit.

15. In the given facts, there is a clear lack of 'due diligence' and the mistake committed certainly does not come within the preview of a typographical error. The term typographical error is defined as a mistake made in the printed/typed material during a printing/typing process. The term includes errors due to mechanical failure or slips of the hand or finger, but usually excludes errors or ignorance. Therefore the act of neglecting to perform an action which one has an obligation to do cannot be called as a typographical error. As a consequence the plea of typographical error cannot be entertained in this regard since the situation is of lack of due diligence wherein such amendment is impliedly barred under the

16. The claim of typographical error/mistake is baseless and cannot be accepted. In fact, had the person who prepared the

plaint, signed and verified the plaint showed some attention, this omission could have been noticed and rectified there itself. In such circumstances, it cannot be construed that due diligence was adhered to and in any event. omission of mandatory requirement running into 3 to 4 sentences cannot be a typographical error as claimed by the plaintiffs. ... ..”

- h. It could be seen from the aforesaid case law, the Hon'ble Supreme Court held that negligence of a person in the preparation of plaint, even after verification cannot be construed as typographical error as claimed. The ratio decided in the aforesaid case law squarely applies to the instant review petition also, and in terms of the ratio of the said Judgment, the claim of the Petitioner as "typographical error is not sustainable.
- i. The 1<sup>st</sup> respondent stated that the review petition/amended review petition is not maintainable at this belated stage in terms of the case laws cited above. Hence the review petition is liable for rejection.
- j. In light of the above submissions, the Commission is prayed to dismiss the review petition/amended review petition as not maintainable

5. The review petitioner has filed an Interim Application (I. A. No. 8 of 2021) seeking amendment in the prayer of the review petition and the contents of it are as below:

- a. It is stated that the petitioner herein had filed a Review Petition (SR) No.4 of 2019 pending before the Commission, limited to the finding in Para 21 [Item No. (i)] read with direction in Para 24 (b) of the Final Order dated 1<sup>st</sup> November 2018 in O. P. No. 8 of 2017.
- b. It is stated that in the said review petition, the petitioner had prayed for the following reliefs in the petition:
  - A) Review the order dated 01.11.2018 in petition O.P.No.8 of 2017 to the extent mentioned above; and
  - B) Allow claim(i) of the petitioner against the respondent No.2.
  - C) ... ..
- c. It is stated that the petitioner inadvertently prayed for relief to be granted against respondent No. 2 in prayer (B), however, the petitioner

intended to seek the said relief against respondent No.1 as reflected and detailed in the body of the review petition.

- d. Therefore, it is stated that this present application is being filed by the petitioner for the limited purposes of modifying/amending prayer if the review petition.
- e. It is stated that the said error is neither wilful nor wanton and is merely typographical in nature. It is stated that if amendment proposed by the petitioner is not allowed, the petitioner will suffer grave loss, whereas allowing the said amendment will not cause any prejudice to the respondent.
- f. In view of the above it is prayed that the Commission may be pleased to permit the petitioner to amend the review petition that is Review Petition (SR) No.4 of 2019:

1) Prayer (B) in page 8 of the review petition:

"(B) Allow claim(i) of the petitioner against the Respondent No.2: and"

TO BE AMENDED AS FOLLOWS:

"(B) Allow Claim(i) of the Petitioner against the Respondent No.1 and"

- 6. The representative of the respondent No. 1 has filed a copy of Hon'ble Supreme Court judgment dated 18.09.2020 in Civil Appeal Nos.3007-3008 of 2020 in the matter of Sagufa Ahmed & Ors. Vs. Upper Assam Plywood Products Pvt. Ltd., & Ors. the relevant portion of it is shown below:

"... ..

19. ... ..

*"It is needless to point out that the law of limitation finds its root in two latin maxims, one of which is Vigilantibus Non Dormientibus Jura Subveniunt which means that the law will assist only those who are vigilant about their rights and not those who sleep over them.*

... .."

- 7. The Commission has heard the parties at length and also perused the material placed before it including the rulings rendered by the Hon'ble Supreme

Court. The submission made by the counsel for the parties are briefly extracted herein below.

Record of proceedings dated 15.02.2021:

"... .. The counsel for the review petitioner stated that the review petition is filed for reviewing the order passed by the Commission. The counsel for the 2<sup>nd</sup> respondent stated that the review petition is directed against the TSDISCOMs in the contents, but the prayer seeks reliefs against all the respondents. If the review petitioner is seeking relief against the DISCOMs, the 2<sup>nd</sup> respondent need not file a counter affidavit as otherwise it is required to file counter affidavit and for that purpose the respondents needs sufficient time. This aspect is required to be clarified by the review petitioner. The counsel for the review petitioner stated that the matter may be adjourned to a short date as the senior counsel will appear and argue the matter. The representative of the DISCOMs stated that they have also filed a review petition against the said order, which is also listed today for hearing. The representative also stated that there is an application for condoning the delay for 87 days, which is beyond 75 days as provided in the business regulation of the Commission. In view of the request of the review petitioner, the same is adjourned."

Record of proceedings dated 22.02.2021:

"... .. The counsel for the petitioner stated that the short issue in the review petition is with regard to interpretation of the purchase order and the payment effected by the respondents pursuant to reasoning given by the Commission. The reasoning given by the Commission needs to be reviewed in view of the ambiguity between the purchase order and the PPA entered by the parties. The representative of the respondent No.1 stated that the order of the Commission is clear and emphatic in so far as this review petition is concerned, therefore, the same need not be reviewed. The representative of the respondent No.1 stated that the main prayer in the review petition is against the 2<sup>nd</sup> respondent and as such the 1<sup>st</sup> respondent is not required to answer the review petition. The counsel for respondent No.2 stated that in view of the submissions of the counsel for the petitioner, he needs time to file the counter affidavit to the review petition and as such, the matter may be adjourned by two weeks. Accepting the request of the counsel for the

*respondent No.2, he is allowed to file counter affidavit on or before 08.03.2021 duly serving a copy of the same to the review petitioner as also the other respondent No.1 through email or in physical form. Accordingly, the matter is adjourned and it is made clear that there will be no further adjournment of the matter, as it will be heard.*

*Record of proceedings dated 18.03.2021:*

*"... .. The counsel for the review petitioner sought time to file rejoinder insofar as the respondent No.2's counter. The counsel for respondent No.2 stated that the counter affidavit has been filed and a copy of the same has been served on the other parties in the matter. The representative of the respondent No.1 stated that they are yet to receive a copy of the same. In view of the request of the parties and the status of the pleadings, the matter is adjourned."*

*Record of proceedings dated 02.06.2021:*

*"... .. The counsel for the review petitioner sought further time to file rejoinder in the matter insofar as the respondent No.2's counter affidavit is concerned. In view of the request of the counsel for petitioner the matter is adjourned as a last chance. The petitioner shall file the rejoinder on or before the next date of hearing without fail by duly serving to the other parties either by email or in physical form. Accordingly the matter is adjourned."*

*Record of proceedings dated 16.06.2021:*

*"... .. The counsel for petitioner stated that the present review petition is filed seeking review of the order passed by the Commission in the original petition giving partial relief in respect of one of the claims. He stated that the principle adopted in allowing the claim No.3 in the original petition has to be applied to the claim No.1 also. This is the short issue for the review of the order. While applying the principle for the claim No.1 in the original petition, the Commission allowed only 50% relief instead of allowing in its entirety as has been done in respect of the claim No.3. The review petition is maintainable as no new facts or submissions are being made except correct the principle applied in deciding the matter accordingly.*

*The counsel for respondent No.2 stated that no claim can be made against the respondent No.2 and the issue rests between the original petitioner and respondent No.1. Therefore, the respondent No.2 has no case in the review*

*petition, though the prayer in the review petition is made against the respondent No.2. He has sought permission of the Commission not to be present on the next date of hearing in view of the said submission.*

*The representative of the respondent No.1 stated that he should be discharged from the review petition as the issue for consideration in the review is being agitated between petitioner and respondent No.2. At this stage, the counsel for the petitioner clarified that the review petition is intended and filed against the respondent No.1 and not against the respondent No.2 as the claim was originally made against the respondent No.1 only. Upon such submission, the representative of the respondent No.1 stated that unless a proper amendment in the prayer is made, the petition cannot be proceeded with and the petitioner in the review petition has to take steps accordingly. He further stated that in support of his submissions, he is relying on the judgments reported in AIR 1963 SC 235, 2001 (6) SCC 633 and 2009 (10) SCC 84.*

*The counsel for petitioner agreed to file a memo to modify the prayer in the review petition as there was a mistake. The representative of the respondent No.1 insisted upon taking leave of the Commission for amending the prayer properly, then only the Commission may consider the review petition. The counsel for petitioner submitted that the judgments relied upon by the respondent No.1 may be placed on record and upon such filing he would advert to all the aspects and filed a memo.*

*In view of the submissions, the Commission directed the Respondent No.1 to file the relevant judgments before the Commission by duly serving copies to the review petitioner. The counsel for petitioner shall file a memo on or before the next date of hearing. Accordingly the matter is adjourned."*

*Record of proceedings dated 28.06.2021:*

*"... .. The counsel for the petitioner stated that on the earlier occasion, the Commission directed the petitioner to file a memo about the amending of the prayer. However, the petitioner is filing a regular application to amend the prayer in the review petition. As the signed papers have not been received as yet, he needs time to file the same. The representatives of the respondents and the counsel for respondent No.2 opposed the seeking of time. However*

*recognizing the need to amend the prayer, the Commission granted time of one week and adjourned the matter."*

*Record of proceedings dated 07.07.2021:*

*"... ... 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."*

*Record of proceedings dated 29.07.2021:*

*"... ... The counsel for the petitioner stated that the arguments in the matter were already completed on the earlier date of hearing. The only aspect that is remaining is with regard to allowing the application for amendment of the prayer. He stated that there was a typographical error while seeking review of the order of the Commission. Therefore, this application is filed to correct the said typographical error. He sought to rely on the judgment referred by the respondents with regard to amendment of the pleadings and stated that the same is in favour of the review petitioner for the purpose of this amendment. The representative of the respondent No.1 stated that the submissions have already been made in the review petition and the Commission may consider refusing the review petition, as there is no error in the order of the*

*Commission. The counsel for petitioner stated that the review petition is intended solely to correct the finding in respect of the relief No.1 in the main petition by applying the principle as decided in respect of the relief No.2 in the main petition.”*

8. The respondent No.1 pointed out that the review petitioner had filed the review petition by showing respondent No.2 as the party, which is liable for the claims made by it and at this belated stage, it cannot be brought upon the respondent No.1. Moreover, unless the prayer for review is amended the respondent No.1 is not required to contest the matter. Consequently, the review petitioner filed an amendment application to rephrase the prayer against the respondent No.1 instead of respondent No.2 as it was filed wrongly due to typographical error.

9. Upon filing of the application, the respondent No.1 contested the matter by citing several judgments through written submissions filed by it. It is the case of the respondent No.1 that prejudice will be caused if the amendment application is allowed and such an application cannot be entertained at a belated stage after two years six months of filing of the review petition and the claim of typographical error or mistake is baseless and cannot be accepted. In support of its contention, the respondent No.1 relied over the ratios laid down in the following judgments of the Hon'ble Supreme Court.

- a. AIR 1953 SC 235 in the matter of TROJAN & Co Ltd. vs. RM N. N. Nagappa Chettiar, to highlight the fact that the relief cannot be outside the pleadings of the parties. This judgment is of no use to respondent No.1 as it does not dwell into the aspect of amending the pleadings at review stage.
- b. 2001 (6) SCC 163 in the matter of Vishwambar vs. Laxminarayan. The factual matrix apart in that matter has also dealt with amending the pleadings and the time line to be followed under the Limitation Act insofar as bringing affected parties on record and also filing of the suit for setting aside the transfer of property in that matter. Such is not the case before the Commission as it does not involve any limitation and is with reference to amending the prayer and not bringing any substantial

or qualitative change in the prayer or pleadings, which is barred by any other law.

- c. 2009 (10) SCC 84 in the matter of Revajeetu Builders & Developers vs. Narayanaswamy & Sons & others. The Hon'ble Supreme Court was considering factors to be taken into account while dealing with applications for amendment of the pleadings. Though broadly the Hon'ble Supreme Court espoused the factors, the factors mentioned therein would be with reference to substantial pleading in a matter and not with reference to typographical mistakes which are hitherto to be considered in a review and it has no reference to the general amendment of pleadings. The respondent No.1 sought to rely on the point No.3 in paragraph 67 of the said judgment as also point No.6 as extracted elsewhere in this order. The context of these findings is with reference to Order VI Rule 17 of the Civil Procedure Code and it does not emanate from Order XLVII Rule 1 of the Civil Procedure Code. Further, the Hon'ble Supreme Court itself at paragraph 68 has observed as below:

“68. — These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.”

Thus, the judgment referred to is out of context to the matter.

- d. 2012 (2) SCC 300 in the matter of J. Samuel & Others vs. Gattu Mahesh & Others in Civil Appeal No.561 of 2012. The judgment arises out of a matter decided by the Hon'ble High Court of Andhra Pradesh as it then was in respect of a suit before the Additional District Judge of Karimnagar at Jagtial. From the judgment, it is noticed that the Hon'ble Supreme Court also recorded the fact that the Civil Procedure Code Amendment Act, 1999 omitted Rule 17 and 18 of Order VI of Civil Procedure Code, but the same was reintroduced subsequently. In this regard, it may be appropriate to notice the provision relating to amendment of pleadings as extracted below:

“17. Amendment of pleadings:- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just,

and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

In this particular case, the amendments sought to be made, is with reference to prayer and it does not alter rights and liabilities of the parties as the parties are already before the Commission and are under notice for undertaking the review of the order. In these circumstances, this judgment referred to by the respondent No.1 is of practically irrelevant, as the proceeding is neither original proceeding nor the respondent No.1 is not now added afresh to the proceedings. The core issue of typographical error cannot stagnate the substantial decision making process. Hence, this contention is refused.

- e. Civil Appeal Nos.3007-3008 of 2020 judgement dated 18.09.2020 in the matter of Sagufa Ahmed & Ors vs. Upper Assam Plywood Products Pvt. Ltd. & Ors.. It is his case with regard to limitation the present amendment proposed by the review petitioner is not maintainable as it is filed beyond two years of filing of the original review petition and the same cannot be permitted. This argument stems from the fact that the Hon'ble Supreme Court during the pandemic situation of COVID-19 had granted general extension of limitation to all filings before the various authorities including courts but the same is not applicable to a proceedings where specific time period is fixed and the litigants are not vigilant. In this case, the review petitioner is not vigilant according to the review petition. Suffice it to state that the amendment now sought to be made is with reference to the prayer in the review petition and it does not alter the contentions and submissions of the review petitioner so as to affect the rights or liabilities of the review petitioner. The only issue that the review petitioner is placing before the Commission is to review the order and not reworking of the liabilities afresh. In these circumstances, the question of limitation would not arise.

10. Though, the respondent No.1 may be appropriate in stating that the review petition cannot be amended, but it is also relevant that before arriving at any conclusion in the review petition, the Commission is required to ensure that the errors sought to be corrected, should not also creep into the review proceedings.

11. Coming to the submissions of the respondent No. 2, it can be stated that it is neither interested nor is connected to the issue. The respondent No.2 raised several submissions with regard to maintainability of the review petition against it as also conditions of review under the provisions of Civil Procedure Code along with appropriate case law. The Commission is in agreement with respondent No.2 that the review does not lie, if it cannot be shown that there is 'error apparent on the face of the record'. Lastly, it sought deletion of respondent No.2 from the review petition as no relief can be granted against it. The Commission duly recognizing the submissions would only consider the review petition as against the respondent No.1.

12. The Commission now turns to the issue of reviewing the order. It may be appropriate to notice the issue is with regard payment of PoC charges. Several submissions have been made per and contra to the review petition, but the short issue which is required to be examined is with reference to the para 21 [item No. (i)] of the original order dated 01.11.2018 passed in O. P. No. 8 of 2017 filed by the review petitioner and the conclusion arrived at in para 24(b) of the said order. The para 21 [item No. (i)], para 23 along with the findings at para 24 which are required to be considered for review are extracted below:

“21. In Item (i): which is mentioned as first claim in the petition, the petitioner alleged that the total amount of PoC charges Rs.23,75,082/- under MTOA should be borne by the DISCOM. The petitioner justified this claim on the ground that the 3<sup>rd</sup> amendment to sharing of interstate transmission charges and losses regulations, 2015 merged PoC injection charges with PoC withdrawal charges. The DISCOM had paid Rs.11,87,541/- towards 50% of its share the material on record shows. The petitioner is demanding DISCOM to pay balance 50% of PoC charges along with interest @ 18% per annum in the present petition. As discussed supra, based on the terms of PPA dated 29.10.2014 it is the petitioner who has to bear 50% of PoC charges. R-1 had admittedly

paid 50% of the balance. Thus, it is the petitioner who has to bear Rs.11,87,541/- towards its 50% liability. Since the DISCOM had already paid its 50% share on item-II, the petitioner is not entitled to any amount including interest from the R-1/DISCOM.

... ..

23. The petitioner claimed an amount of Rs. 53,10,342/- on account of full PoC charges for the reduction and curtailment in procured quantum through STOA with interest. Article 3.10 of PPA dated 29.10.2014 contemplates that Telangana SLDC shall intimate one day in advance regarding any backing down to all the generators as provided in the LOI conditions. In case of revision/ cancellation of MTOA / STOA, the party seeking revision /cancellation of MTOA / STOA shall bear the entire cost on its account due to such revision/cancellation of MTOA / STOA as per the applicable CERC regulations for MTOA/STOA. Revision of schedules by Telangana SLDC should be firm and intimated well in advance so as to allow SCL to communicate to SSL. This article contemplates payment of entire cost by the party seeking revision/cancellation of MTOA / STOA. The material placed on record shows that in some cases it was the DISCOM which reduced the quantum and in some cases, it was the RLDC which reduced the quantum of MTOA / STOA.
24. In the result and in view of the findings on issues I to III, the petition is disposed of as follows:
- (a) The Commission has no jurisdiction to implement the terms of PPA dated 31.10.2014 between the petitioner and R-2 (the generator) since any dispute under this PPA is triable only in the courts at New Delhi.
  - (b) The respondent no.1 is not liable to pay Rs.11,87,541/- under MTOA to the petitioner.
  - (c) The respondent no.1 is not liable to pay Rs.78,47,121/- representing PoC charges based on the terms of PPA dated 29.10.2014.

- (d) R-1 should bear the cost based on how many times it sought revision/cancellation of STOA initiated by it with interest @ 6% from the date of this order till payment.”

13. The review petitioner is aggrieved of the above said observations along with the finding insofar as item (b) of para 24 extracted above and is seeking review thereof. The said observations and findings emanate from the clauses in the purchase order dated 13.10.2014 issued by the 1<sup>st</sup> respondent as also the PPA dated 29.10.2014 entered by the petitioner and the respondent No. 1. The basis for review of the said relief is with reference to clause 3.10 of the PPA. The said clause of the PPA is specific and unambiguous, and the payment of amounts has to be in accordance with the said clause. Further, this clause has to be read in conjunction with the remaining part of the said clause and in totality has to be considered. The PPA dated 29.10.2014 has actually provided the clause as below:

**“3.10 Revision of Schedule / Cancellation of Open Access**

Telangana SLDC shall intimate one day in advance regarding any backing down to all the generators as provided in the Lol conditions. In case of revision/cancellation of MTOA/STOA, the party seeking revision/ cancellation of MTOA/STOA shall bear the entire cost on its account due to such revision/cancellation of MTOA/STOA as per applicable CERC Regulations for MTOA/STOA.

Revision of schedules by Telangana SLDC should be firm and intimated well in advance so as to allow SCL to communicate to SSL.”

14. Further, the respondent No. 1 in its counter affidavit filed against the original petition, has specifically stated as below:

“ ... ..

13. Regarding the other claims, viz., 1<sup>st</sup> claim (MTOA claim 1) & 3<sup>rd</sup> claim (STOA claim 3) by the petitioner to seek refund of the entire PoC charges (even for PoC Injection and other charges before delivery point) due to the reduction/curtailment (backing downs) given by TSSLDC, it is submitted that the 1<sup>st</sup> respondent is obligated to reimburse PoC charges & other charges beyond delivery point only and not before delivery point in terms of the Short Term Purchase Order provisions and any claim other than agreed terms is

contrary to the Purchase Order agreed & energy supplied and hence should not be permitted.

... ..”

15. Adverting to the purchase order dated 13.10.2014, it is seen that open access charges, compensation and revision by SLDC/RLDC are provided therein and the same are extracted below for better understanding of the issue.

**Open Access Charges:**

“PoC injection charges and losses (including STU/CTU transmission charges, SLDC/RLDC Operating Charges and SLDC/RLDC application fee, Annual fee, PGCIL Application Fee, SRLDC Application Fee and SRLDC Operating charges etc.) up to delivery point have to be borne by trader/seller. TS withdrawal charges and losses, TSSLDC application fee, operating charges, Annual fee and TSTRANSCO transmission charges are to the account of TSDISCOMs. Even Open Access charges beyond delivery point also have to be paid by trader/seller. However reimbursement of Open Access charges beyond delivery point will be made on submission of Open Access bill by Seller. ... ..”

**Compensation**

“... ..

d) In case deviation from buyer side is more than 15% of contracted energy for which open access has been allocated on monthly basis. Buyer shall pay compensation at 20% of contracted tariff per kWh for the quantum of shortfall in excess of permitted deviation of 15% while continuing to pay open access charges as per the contract.

... ..

j) For the generators located at outside SR, if they get truncated, non RTC, non-uniform approved corridor, they should be allowed to a choice to withdraw the supply which is not viable to them both physically and economically.”

**Revision by TSSLDC:**

“a) Revision of schedules by SLDC should be firm and intimated well in advance so as to allow the bidder for sell the same to the third party.

- b) TSSSLDC shall intimate one day in advance regarding any backing down to all the generators as provided in the Lol condition.
- c) If advance notice is not possible and any backing down taken place a margin of 10% of backing down quantum should be given over the energy (MU) and quantum (MW) for certification of energy by EBC on each 15 min block. However, the total billing energy should be limited to monthly Lol quantum.”

16. A combined reading of the provisions in the Purchase Order and the conditions imposed in the Lol would lead to irresistible conclusion that the claim made by the review petitioner is inappropriate and cannot be accepted. The contention of the licensee in the original petition as well as in the review petition would lead to the situation that it is not liable to pay any charges as the provisions mentioned above are emphatically clear and the same are in terms of the subsisting regulation at the relevant time. The respondent No.1 had communicated the Letter of Intent (Lol) and factored certain conditions with regard to procurement and subsequently signed the agreement, which the review petitioner also agreed to even in the absence of clarity on the Lol issued to the review petitioner.

17. Inasmuch as, the power purchase agreement entered between the review petitioner and respondent No.1 is emphatic and clear insofar as revision of schedules and cancellation of open access, the consequences thereof. That being the case, the review petitioner cannot seek to be compensated towards losses and also charges without reference to the provisions in the PPA in the event of licensee/respondent No.1 refusing to draw power or that the SLDC/RLDC had curtailed supply to be drawn from the review petitioner through its generator by the respondent No.1. At any rate, the agreement impliedly overrules all other arrangements as it conveys or concludes the intention of the parties on either side *vis-à-vis* the subject matter of the agreement, that is offer and acceptance in terms of the contract law.

18. On examination of the provisions in the PPA, the Commission finds that the finding arrived at by it appears to be appropriate as it arrived at the true interpretation of the provisions of the PPA. The liability to compensate in terms of the PPA squarely rests with the party which has cancelled or revised the MTOA and STOA or

reduction or revision of quantum of energy to be drawn by the beneficiary. In this regard, SLDC and RLDC may have had a role with regard to system exigencies. However, the beneficiary who is the contracting party, cannot be asked to bear all the costs involved thereof as it itself is not responsible for actions or inactions of the third parties. As such, this Commission had rightly arrived at the finding already rendered in the original order.

19. At the same time, the paras 23 and 24 of the said order needs recollection to appreciate the issue and the request made by the review petitioner. The same were extracted elsewhere in this order.

20. Upon examination, it is clear that having held that the claim has to be re-examined by the parties in terms of the PPA, the different events cannot be clubbed together and the review petitioner cannot claim the same relief as the same are dependent on the relevant clauses in the PPA. Having signed the PPA and not getting it amended to incorporate the appropriate charges, the review petitioner cannot rise from ashes and say that both the issues are similar, when it squarely conceded that STOA claim 3 is different from MTOA claim 1. Accordingly, the Commission cannot come to a different conclusion than that was arrived at by it in para 21 and 24 of the order dated 01.11.2018.

21. Thus, the review petition cannot succeed as it has not made out any case for reviewing the finding at point (b) in paragraph 24 read with paragraph 21 i.e., with regard to claim (i) of the petitioner of the original order in O.P.No.8 of 2017.

22. Accordingly, the review petition is rejected against the respondent No.1 and it is dismissed against the respondent No.2. In the circumstance, there shall be no costs.

23. The interlocutory application having been accepted to seek the amendment of the prayer in the review petition is allowed in view of the observations made above.

**This order is corrected and signed on this the 08<sup>th</sup> day of March, 2022.**

<b>Sd/-</b> (BANDARU KRISHNAIAH) MEMBER	<b>Sd/-</b> (M.D.MANO HAR RAJU) MEMBER	<b>Sd/-</b> (T.SRIRANGA RAO) CHAIRMAN
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