

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION  
BHOPAL**

**Sub: In the matter of review of petition under section 94 of the Electricity Act, 2003 read with Regulation 40 of the MPERC (Conduct of Business) Regulations, 2004 seeking review of the Order dated 07/12/2021 passed by this Commission.**

**ORDER**

**(Hearing through video conferencing)  
(Date of Order: 14<sup>th</sup> June' 2022)**

**M/S Shalivahana (Biomass) Power Projects Ltd.,**  
7<sup>th</sup> Floor, Minerva Complex, SD Road  
Secunderabad – 500003

- **Petitioner**

**Vs.**

**Madhya Pradesh Power Management Company Limited**  
Shakti Bhawan, Block No. 11,  
Rampur, Jabalpur – 482008

- **Respondent**

Ms. Swapna Seshadri, Advocate appeared on behalf of Petitioner.

1. The Petitioner M/S Shalivahana (Biomass) Power Projects Ltd. filed the subject petition for review of Commission's Order dated 07/12/21 in Petition No. 46 of 2021 filed under Section 86(1)(f) of the Electricity Act, 2003 read with the appropriate provisions under MPERC (Terms and Conditions of Tariff) Regulations, 2014. In the subject petition, the Petitioner has sought review on the following grounds:

- (i) There is clear violation of the Natural Justice in the manner in which proceedings in Petition No. 46 of 2021 have been conducted. There was no intimation that the motion hearing on 23/11/2021 was an e-hearing and no link was sent to the e-mail id of the Petitioner's representative;
- (ii) The daily order dated 25/11/2021 was communicated to the Petitioner only on 06/12/2021. By this time the period of 7 days prescribed in the Order dated 25/11/2021 was already over; and
- (iii) The matter was dismissed on 07/12/2021 but the additional affidavit filed by the Petitioner was accepted by the office of the Commission on 10/12/2021.

2. The Petitioner has submitted the following in this review petition:

*“(i) The petitioner – M/s. Shalivahana (Biomass) Power Projects Limited had filed Petition No. 46 of 2021 before this Hon'ble Commission under Section 86(1) (f) read with the appropriate provisions of the MPERC (Terms and Conditions of Tariff) Regulations, 2014. The Petitioner had prayed for a direction to the Respondent No. 1 – Madhya Pradesh Power Management Co. Limited (MPPMCL) to execute Power Purchase Agreement (PPA) with it to enable the sale of 10MW biomass-based power from the Petitioner's plant at village*

*Bharoli, Umariya District.*

- (ii) The petition had been filed directed and without the involvement of any Advocate. The matter was fixed for motion hearing on 23/11/2021 and the representative of the Petitioner physically travelled to Bhopal since there was no intimating of the hearing being conducted by electronic means. On reaching the office of this Hon'ble Commission, the representative came to know that it was an e-hearing. No link had been received by the representative of the Petitioner for the hearing to be held on 23/11/2021. The copy of the ticket for travel between Hyderabad and Bhopal on 23/11/2021 is attached herewith and marked as Annexure A.*
- (iii) However, on coming to know, the Petitioner's representative obtained the hearing link from another biomass developer, who also had a matter fixed for hearing on the same date.*
- (iv) The Petitioner's representative was asked by this Hon'ble Commission to clarify the legal provisions of the Electricity Act, 2003 or any other law under which it was seeking directions to MPPMCL for the execution of the PPA. The representative of the Petitioner requested for some time to revert on the issue.*
- (v) This Hon'ble Commission by an Order dated 25/11/2021 seems to have directed the Petitioner to file its Written Submission on affidavit within a week. However, the Order dated 25/11/2021 was only received by the Petitioner on 06.12.2021.*
- (vi) However, without waiting for the Order the Petitioner found out an Advocate in Delhi and sought time for consultation. The Petitioner's representative could meet the Advocate in Delhi on 06/12/2021 immediately after receipt of the order dated 25.11.2021. After apprising the Advocate of its case, an additional affidavit was prepared by the Advocate on 07/12/2021. Immediately the representative of the Petitioner travelled to Bhopal, obtained the executed affidavit from Hyderabad, filed the same before this Hon'ble Commission after due notarization on 10/12/2021. The copy of the acknowledged additional affidavit on behalf of the Petitioner is attached hereto and marked as Annexure B.*
- (vii) To the utter surprise of the Petitioner, the Petitioner received a copy of the Order dated 07/12/2021 passed by this Hon'ble Commission dismissing the Petition No. 46 of 2021 on 17.12.2021. This Hon'ble Commission has dismissed the petition by an Order of 07/12/2021 but accepted the filing of the additional affidavit on behalf of the Petitioner on 10/12/2021.*
- (viii) The above course followed has caused severe prejudice to the Petitioner and is clear error apparent on the face of record.*
- (ix) In the circumstances, the Petitioner has preferred the subject petition seeking*

*review of the Order dated 07/12/2021 under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 40 of the MPERC (Conduct of Business) Regulation, 2004 and prays as under:*

- (i) Admit the Review Petition;*
- (ii) Consider the additional affidavit filed by Petitioner on 10/12/2021;*
- (iii) Re-open Petition No. 46 of 2021 for hearing; and*
- (iv) Pass any such further Order(s) as this Commission may deem just and proper in the circumstances of the case."*

3. At the motion hearing held on 24/05/2022, Ld. Counsel who appeared for the Petitioner reiterated the reasons mentioned in this petition for seeking review in this matter. With regard to grounds for review, Ld. Counsel for the Petitioner cited one judgment of the Hon'ble Supreme Court and stated that she will file the same on record.

4. At the aforesaid hearing, the Commission noted that the subject review petition has been filed after a delay of 27 days without any application seeking condonation in delay for filing the same. Therefore, vide Commission's order dated 26/05/2022, Petitioner was directed to file copy of the aforesaid Judgment cited by it in support of the grounds for review in this matter along with the application for condonation of delay in filing the review petition, by 31/05/2022.

5. By affidavit dated 25/05/2022, Petitioner placed on record the judgment of Hon'ble Allahabad High Court in the matter of ***Shri Krishna Banwari Lal and others Versus Behari Lal Shri Krishna and another (AIR 1964 ALL 516)*** dated 07/01/1964, along with an application mentioning reasons for delay in filing of subject petition.

6. The Petitioner has relied on the above judgment passed by Hon'ble Allahabad High Court which held as under:

***"13. Omission on the part of a Court either due to its inadvertence, or on account of the failure of the counsel to draw its attention to consider material pieces of evidence on the record affecting the merits of the case has always been held either an error apparent on the face of the record or as sufficient cause for justifying interference by way of review."***

7. On perusal of facts and circumstances in the above case of ***Shri Krishna Banwari Lal and others Versus Behari Lal Shri Krishna and another*** cited by the Petitioner in support of its contention, it is noted that as per para 4 of the aforesaid order- *"application for review was primarily based on following two grounds:*

- (i) Exhibit 3, a letter addressed by the defendants to the plaintiffs which was on the record of the suit and had been relied upon the defendants as well clearly proved the liability of defendants to pay interest to the plaintiffs, but the full contents of this document escaped the notice of the court, which amounted to a mistake apparent on the face of the record.***
- (ii) The entries in the account books filed by the defendants in the case substantiated a major portion of the plaintiff's claim, but they escaped the***

*attention of the court, although the books were on record and had been exhibited in evidence. This, according to the applicants, was a sufficient reason in law for review of the decree”.*

(Emphasis Supplied).

8. In view of the above, the Order of Hon’ble Allahabad High Court in the matter of ***Shri Krishna Banwari Lal and others Versus Behari Lal Shri Krishna and another*** cited by Petitioner does not support the contention of Petitioner in the facts and circumstances of the present case.

9. The reasons mentioned in the subject petition for review of Commission’s order in the subject matter do not carry any strength at the outset for review under law. However, the Commission would like to examine below each reason via-a-vis the facts and figures on record during proceedings in Petition 46 of 2021 and also while passing Commission’s order dated 07/12/2021 under review in this petition:

- (i) **Issue No. 1:** The Petitioner has stated that it was neither intimated of the motion hearing in Petition No. 46 of 2021 nor did he receive the electronic link of the same.

**Observation:** Vide Commission’ Notice No. MPERC/JD(RE)/2021/1498 dated 05/10/2021, the Petitioner was informed to attend the motion hearing on 23/11/2021 at 11:00 Hrs. In the aforesaid notice, the Petitioner was asked to provide the contact no. and e-mail ID of the Advocate/Representative who will appear for the Petitioner as per the guidelines available on the Commission’s website. Further, the link for attending motion hearing was mailed on the e-mail address which was on record in the Petition No. 46 of 2021. Therefore, intimation for motion hearing through a hard copy as well as virtual mode along with link was given to Petitioner at the e-mail address on record in Petition No. 46 of 2021.

- (ii) **Issue No. 2:** The Petitioner has submitted that the Petitioner received the daily Order in Petition No. 46 of 2021 dated 25/11/2021 only when 7 days prescribed in the order were over. As a result, the Petitioner was unable to file the Reply and Affidavit on time.

**Observation:** The Commission passed the Order dated 25/11/2021 in Petition No. 46 of 2021 in the presence of the authorised representative of the Petitioner i.e., Shri Naveen Malka who was the director and authorized representative of petitioner as per records. Shri Naveen Malka himself asked the Commission for a week’s time to mention the legal provisions under the Electricity Act, 2003 and the Indian Contract Act, 1872 for seeking directions of Commission in prayer of petition. Accordingly, there was no need to wait for the receipt of the Order in order to file a reply. This claim is absolutely unfounded. Further, the Order dated 25/11/2021 was uploaded on the Commission’s

website on 26/11/2021 and therefore, was accessible to the Petitioner. Under no circumstance can the non filing of reply within stipulated time be attributed to the aforesaid reason.

- (iii) **Issue No. 3:** The Petitioner has submitted that the matter was dismissed on 07/12/2021 but additional Affidavit dated 10/12/2021 was accepted by the Commission.

**Observation:** The Commission vide Order dated 07/12/2021 in Petition 46 of 2021 held that the Petitioner has failed to file its written submission within the time frame of one week as stipulated in the Commission's last Order dated 25/11/2021 and even till the date of issue of this order i.e., 07/12/2021, no response was received from the Petitioner. Any submission after issuance of Order dated 07/12/21 by the Commission has no relevance. On this basis, it is noted that the additional affidavit filed by Respondent on 10/12/21 has no merit.

- (iv) **Issue No. 4:** The Petitioner in its additional affidavit dated 25/05/2022 has taken one additional ground stating that since the hearing was electronic and the Petitioner's representative has logged on through his phone, it was not clear as to how much time has been granted to the Petitioner in the hearing.

**Observation:** Commission has examined the records of hearing dated 23/11/2021, and it is clear that the aforesaid contention of the Petitioner is incorrect and misleading.

10. Having discussed and deliberated at length on the issues stated by Petitioner for review in the subject petition, the Commission has examined the subject review petition in accordance with Rule 1 Order 47 of the Code of Civil Procedure (CPC), which provides that a person aggrieved by an order may apply for a review under the following circumstances:

- (a) On discovery of new and important matter or evidence which after exercise of due diligence was not within his knowledge or could not be produced by him at a time when the order was made;
- (b) An error apparent on the face of the record;
- (c) For any other sufficient reason

11. Let us refer to a few judgments passed by the Hon'ble Supreme Court and various High Courts for the scope and effect of review under the CPC:

- (i) The judgment of the Hon'ble Supreme Court in **Parsion Devi and Others vs. Sumitri Devi and Others [1997 (8) SCC 715]**, wherein it was held as under: *"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". There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise".*

- (ii) In the case of **Lily Thomas vs. Union of India, (2000) 6 SC 224**, it is observed and held that: *"the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. It is further observed in the said decision that the words "any other sufficient reason" appearing in Order 47 Rule 1 CPC must mean "a reason sufficient on grounds at least analogous to those specified in the rule" as was held in **Chhajju Ram vs. Neki, AIR 1922 PC 112** and approved by this Court in **Moran Mar Basselios Catholicos vs Most Rev. Mar Poulouse Athanasius, AIR 1954 SC 526**".*
- (iii) The Hon'ble Madhya Pradesh High Court in Sharda **Begam v. Kallu, [2020 SCC OnLine MP 2419]**, decided on 23/10/20 held that: *"it is well settled that in the guise of review, a rehearing is not permissible. In order to seek review it has to be demonstrated that order suffers from error apparent on the face of record. The Court while deciding the application for review cannot sit in appeal over the judgment or decree passed by it. The review petitioner cannot be given liberty to readdress the Court on merits because it is not an appeal in disguise where the judgment/order is to be considered on merits."*

**12.** On examining the reasons/grounds mentioned by Petitioner seeking review in this matter, the Commission has noted that any of such grounds do not fall under the circumstances mentioned by the Petitioner for review under Rule 1 Order 47 of the CPC.

**13.** In view of foregoing, the subject petition seeking review of Commission's Order 46 of 2021 is not maintainable. Hence, the subject review petition is disposed of and dismissed accordingly.

**(Gopal Srivastava)**  
Member (Law)

**(Mukul Dhariwal)**  
Member

**(S. P. S. Parihar)**  
Chairman