

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Review Petition No. 3/RP/2018**

**Coram:  
Shri P.K. Pujari, Chairperson  
Shri A.K. Singhal, Member  
Shri A.S. Bakshi, Member  
Dr. M.K. Iyer, Member**

**Date of order: 11<sup>th</sup> of May, 2018**

**In the Matter of:  
M/s Himachal Sorang Power Private Limited**

..... **Petitioner**

**Versus**

**Powergrid Corporation of India Limited**

.....**Respondent**

**In the matter of:  
Quorum of the Central Commission for hearing the Review Petitions**

**Parties Present:  
Shri Sanjay Sen, Senior Advocate**

**ORDER**

Some of the petitions were heard by the Commission with quorum of four or three members including Shri Gireesh Pradhan, ex-Chairperson and orders were passed. Against the said orders, aggrieved parties have filed review petitions. After the ex-Chairperson demitted office on 19.12.2007, the review petitions were listed before the Commission with quorum of remaining three or two members, as the case may be, who had heard the main petitions and signed the orders. The present review petition alongwith other review petitions were listed for hearing on 14.3.2018 before the Commission comprising three members even though the orders in the main petitions were issued by four members including the ex-Chairperson. Shri Sanjay



Sen, Learned Senior Counsel engaged by SKV Lawyers Offices, Advocates and appearing for the Petitioner submitted the following:

“Learned senior counsel for the Review Petitioner submitted that the order dated 26.9.2017 in Petition No. 32/MP/2017 was passed by the four member bench of the Commission whereas the present Review Petition is listed before three member bench. Learned senior counsel for the Review Petitioner submitted that he would place on record a write-up on the legal position in this regard within one week.

2. The Commission permitted the learned senior counsel to place the legal position on record by 23.3.2018 to enable the Commission to take a view in the matter.

3. The Commission further directed that the present Review Petition and the other Review Petitions in which the issue of Coram is involved, shall be listed after the Commission decides the legal issue raised by the learned senior counsel.”

2. SKV Lawyers Offices, Advocates for the Petitioner have filed an affidavit containing a “Note on quorum for Review Petition”. It has been submitted that the correct legal position on quorum for hearing the review petition is as under:

(a) Order 47 Rule 5 of the Code of Civil Procedure, 1908 (CPC) provides that where a review petition has arisen from an order or a decree of a division bench, such review shall be heard by a bench comprising of same judges or more who had decided the earlier proceedings. The aforementioned statutory mandate has been abided by the Hon'ble Supreme Court in *Reliance Industries Vs. Pravinbhai Jasbhai Patel* {(1997) 7 SCC 300}.

(b) As per the doctrine of *stare decisis*, a bench of a lesser quorum cannot disagree or dissent from the view taken by a bench of a larger quorum {*Central Board of Dawoodi Bohra Community Vs. State of Maharashtra*. (2005) 2 SCC 673}. The said approach was adopted by the Ranchi Bench of Patna High Court in the matter of *Bihari Lal Monka and etc. Vs. Government of India & others* {(2000) SCC Online Pat 50}. In that case, the writ



applications were heard and disposed of by the Division Bench whereas the review applications preferred by the Petitioners were listed before the Single judge of the same Division Bench. Relying on the judgement of the Hon'ble Supreme Court in Reliance Industries (*supra*), the Learned Single Judge refused to adjudicate upon the review applications on the ground that since the earlier applications were heard and disposed of by the Division Bench, the review applications could not be adjudicated upon by him singly and placed the review applications before the Hon'ble Chief Justice so that the same could be listed before the appropriate bench.

(c) A peculiar situation may arise wherein either of the judges who have passed the order which is sought to be reviewed may be precluded from hearing the review petition on account of either death or retirement or any other unforeseeable circumstance. The Privy Council settled the legal position in such eventuality in the case of Maharaja Moheshur Sing vs. Bengal Government {(1857-60) 7 MIA 283} wherein the Privy Council while emphasizing the doctrine of necessity held that a different judge may adjudicate upon the review petition in the event of occurrence of an unexpected and unavoidable cause which precludes the said judge from hearing the review petition.

(d) The afore-mentioned legal position has also been adopted by the Hon'ble Supreme Court in State of Odisha & Others vs. Commissioner of Land Records and Settlement, Cuttack & Ors. {(1998) 7 SCC 162}. Further, the Appellate Tribunal for Electricity (Appellate Tribunal) in Review Petition No.4 of 2017 {Madhya Pradesh Power Management Co. Ltd. vs. M.P. Biomass



Energy Developers Association & Ors.) and in Appeal No.178 of 2016 & batch {Torrent Power Limited and Ors. vs. Gujarat Electricity Regulatory Commission and Ors.} has judiciously adhered to legal position settled in Maharaja Moheshur Sing (*supra*).

(e) The present review petition as listed on 14.3.2018 was being adjudicated by the Commission comprising of only three members whereas the impugned order dated 26.9.2017 passed in Petition No. 32/MP/2017 was adjudicated by the Commission comprising of four Members and therefore, in the light of the aforementioned legal position, it is prudent that the Review Petition is heard by a quorum of equal number of Members who had passed the impugned order dated 26.9.2017.

### **Analysis and Decision**

3. The Central Commission was constituted under the Electricity Regulatory Commission Act, 1998 and continued as such under Section 76 of the Act which is extracted as under:

“Section 76. (Constitution of Central Commission): - (1)There shall be a Commission to be known as the Central Electricity Regulatory Commission to exercise the powers conferred on, and discharge the functions assigned to it under this Act.

(2) The Central Electricity Regulatory Commission, established under Section 3 of the Electricity Regulatory Commissions Act, 1998 and functioning as such immediately before the appointed date, shall be deemed to be the Central Commission for the purposes of this Act and the Chairperson, Members, Secretary, and other officers and employees thereof shall be deemed to have been appointed under this Act and they shall continue to hold office on the same terms and conditions on which they were appointed under the Electricity Regulatory Commissions Act, 1998:

Provided xxx

(3) The Central Commission shall be a body corporate by the name aforesaid, having perpetual succession and a common seal with power to acquire, hold and dispose of

property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

(5) The Central Commission shall consist of the following Members, namely:-

(a) a Chairperson and three other Members;

(b) the Chairperson of the Authority who shall be the Member, ex-officio.”

Thus the Central Commission shall consist of a Chairperson and three members and the Chairperson of the Central Electricity Authority is the Member ex-officio of the Commission.

4. Section 92 of the Act which relates to proceedings before the Commission reads as under:

**“Section 92. Proceedings of Appropriate Commission.-** (1) The Appropriate Commission shall meet at the head office or any other place at such time as the Chairperson may direct, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as it may specify.

(2) The Chairperson, or if he is unable to attend a meeting of the Appropriate Commission, any other Member nominated by the Chairperson in this behalf and, in the absence of such nomination or where there is no Chairperson, any Member chosen by the Members present from amongst themselves, shall preside at the meeting.

(3) All questions which come up before the meeting of the Appropriate Commission shall be decided by a majority of votes of the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding shall have a second or casting vote.

(4) Save as otherwise provided in sub-section (3), every Member shall have one vote.

(5) All orders and decisions of the Appropriate Commission shall be authenticated by its Secretary or any other officer of the Commission duly authorized by the Chairperson in this behalf.”

According to Section 91(1) of the Act, the Commission has to observe such rules of procedure in regard to transaction of business at its meetings (including the quorum at its meetings) as it may specify. The word “specified” has been defined in Section 2(62) of the Act as “specified by regulations made by the Appropriate



Commission or the Authority, as the case may be, under the Act.” The Commission specified the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (hereinafter referred to as “CBR”) in exercise of powers under Section 55 of the Electricity Regulatory Commission Act, 1998 (Act 14 of 1998) which has since been repealed with the enactment of Electricity Act, 2003 (the Act). However, in terms of clause (a) of sub-section (2) of Section 185 of the Act, CBR has been deemed to have been issued under the Act.

5. Relevant provisions of the CBR in so far as the issue of quorum is concerned are extracted as under:

**“2. Definition**

2.(1) in these Regulations, unless the context otherwise requires:

(a) to (d).....

(e) ‘Proceedings’ means and include proceedings of all nature that the Commission may hold in the discharge of its functions under the Act;

(f) to (g).....”

**Proceedings before the Commission**

20. The Commission may from time to time hold hearings, discussions, deliberations, inquiries, investigations and consultations as it may consider appropriate in the discharge of its functions under the Act.

**Quorum**

21. The Quorum for the proceedings before the Commission shall be two.

**Attendance by Members and Voting**

22. No Member including Ex-Officio Member shall exercise his vote on a decision unless he is present during all substantial hearings of the Commission on such matter.

**Hearing of the matter**

53. The Commission may determine the stages, manner, the place, the date and the time of the hearing of the matter as it considers appropriate.

### **Orders of the Commission**

62. The Commission shall pass such orders on the Petition and the Chairperson and the Members of the Commission who hear the matter and vote on the decision shall sign the orders.

63. The reasons given by the Commission in support of its orders, including those by the dissenting Member, if any, shall form part of the order and shall be available for inspection and supply of copies in accordance with these regulations.

### **Review of Decisions, Directions and orders**

103. (1) The Commission may, on an application of any of the persons or parties concerned made within 45 days of making such decisions, directions or order, review such decision, directions or orders and pass such appropriate orders as the Commission deems fit.

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

(3) An application for review shall be listed before the Commission within a period of 15 days from the date of filing such application.

(4) The Review applications shall be disposed of within 15 days from the date of hearing if the review is not admitted and within a period of two months from the date of admission if the application is admitted;

Provided that where the review applications cannot be disposed of within the period as stipulated, the Commission shall record the reasons for the additional time taken for disposal of the review applications.

### **Amendment of orders**

103 A. Clerical or arithmetical mistakes in the orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Commission either of its own motion or on the application of any of the parties.”

6. From the above provisions of the CBR, it is evident that proceedings before the Commission include proceedings of all nature that the Commission may hold in discharge of its functions under the Act which includes petitions for review of its own decisions, directions and orders. Further, the quorum for the proceedings before the Commission is two which means that no proceedings can take place without the presence of at least two members including ex-officio member of the Commission. However, as regards the review petition, only timeline for filing of petitions for review and disposal of such petitions has been indicated. The CBR is silent about the



quorum for hearing the review petitions i.e. whether the review petitions shall be heard by lesser number of members than those who heard the main petition or what should be the quorum if any of the Members including Chairperson retires before the review petition is filed or during the course of the proceedings of the review petition.

7. Section 94 of the Act says that the Commission shall have the same power as are vested in a civil court under the Code of Civil Procedure, 1908 (CPC) for the purposes of any inquiry or proceedings under the Act. Section 94 of the Act reads as under:

**“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 (5 of 1908) in respect of the following matters, namely:-
  - (a) summoning and enforcing the attendance of any person and examining him on oath;
  - (b) discovery and production of any document or other material object producible as evidence;
  - (c) receiving evidence on affidavits;
  - (d) requisitioning of any public record;
  - (e) issuing commission for the examination of witnesses;
  - (f) reviewing its decisions, directions and orders;
  - (g) any other matter which may be prescribed.
- (2) The Appropriate Commissions shall have the powers to pass such interim order in any proceeding, hearing or matter before the Appropriate Commission, as that Commission may consider appropriate.
- (3) The Appropriate Commission may authorize any person, at it deems fit, to represent the interest of the consumers in the proceedings before it.”





Therefore, the Commission can exercise the above powers as vested in a civil court in the course of inquiry or proceedings under the Act. It includes powers of the Civil Court under the CPC for “reviewing its decisions, directions and orders”.

8. Section 114 of the CPC deals with review which is extracted as under:

**“114. Review:-** Subject as aforesaid, any person considering himself aggrieved:-

- (a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,
- (b) by a decree or order from which no appeal is allowed by this Code, or
- (c) by a decision on a reference from a Court of Small Causes,

may apply for a review of judgement to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.”

Further, Order 47 under the CPC deals with the procedural aspects of the review.

The said order is extracted as under:

“

## **ORDER XLVII**

### **REVIEW**

#### **1. Application for review of judgement:-**

(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, or 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 judgement to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgement 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 applies for the review.

**2. To whom applications for review may be made.-** [Rep. by the Code of Civil Procedure(Amendment) Act, 1956 (66 of 1956), se. 14 (w.e.f. 1-1-1957).]

**3. Form of applications for review.-** The provisions as to the form of preferring appeals shall apply mutatis mutandis, to applications for review.

**4. Application where rejected.-** (1) Where it appears to the Court that there is not sufficient ground for a review, it shall reject the application.

(2) **Application where granted.-** Where the Court is of opinion that the application for review should be granted it shall grant the same:

Provided that-

(a) no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree or order, a review of which is applied for; and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation.

**5. Application for review in Court consisting of two or more judges.-** Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same.”

9. As per Section 114 of the CPC, an appeal can be preferred against an order or decree where no appeal has been filed, though the appeal is allowed and where no appeal is allowed before the court which passed the decree or made the order and the court may pass such order as it thinks fit. Order 47 Rule 1 contains the basic principle that a person who desires to obtain a review of a judgement or order must apply for review to the same court which passed the said judgement or order on the grounds stated therein. Order 47 Rule 5 is an extension of the same principle. Rule 5 states that where the judge or judges or any one of the judges who passed



the decree or made the order, a review of which is applied for, continues or continue to be attached to the court at the time when the application for review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such judge or judges or any of them shall hear the application, and no other judge or judges of the court shall hear the same. It means that the same judges who passed the original order should decide the review petition unless they are precluded by absence or other cause from hearing the same.

10. It is pertinent to mention that there is no provision in the CBR akin to Section 114 or Order 47 Rules 1 & 5 of the CPC. The Constitution Bench of the Hon'ble Supreme Court in Union of India V. Madras Bar Association {(2010) 11 SCC 1} while stating the difference between courts and tribunals explained how far statutory procedural rules, in particular the CPC, govern proceedings of the Tribunals.

Relevant paragraphs of the judgement are extracted below:

“45. Though both courts and tribunals exercise judicial power and discharge similar functions, there are certain well-recognized differences between courts and tribunals. They are:

- (i) Courts are established by the State and are entrusted with the State's inherent judicial power for administration of justice in general. Tribunals are established under a statute to adjudicate upon disputes arising under the said statute, or disputes of a specified nature. Therefore, all courts are tribunals. But all tribunals are not courts.
- (ii) Courts are exclusively manned by Judges. Tribunals can have a Judge as the sole member, or can have a combination of a judicial member and a technical member who is an “expert” in the field to which the tribunal relates. Some highly specialized fact-finding tribunals may have only technical members, but they are rare and are exceptions.
- (iii) While courts are governed by detailed statutory procedural rules, in particular the Code of Civil Procedure and the Evidence Act, requiring an elaborate procedure in decision making, tribunals generally regulate their own procedure applying the provisions of the Code of



Civil Procedure only where it is required, and without being restricted by the strict rules of the Evidence Act.”

As per the above judgement, the Tribunals generally regulate their own procedure and apply the provisions of the CPC wherever required and without being restricted by the strict rules of the Evidence Act. On the same principle, the Central Commission which has been permitted under Section 92(2) of the Act to follow its own procedure in conduct its business can be guided by the principles of CPC, wherever required.

11. The Appellate Tribunal for Electricity in its judgement dated 30.3.2017 in Torrent Power Ltd. Vs GERC & Others and related appeals observed with regard to applicability of Order 47 Rule 5 as under:

“47. We are unable to accept this submission. We do not attach any importance to absence of provision akin to Rule 5 of Order XLVII in the said Act or in the GERC Regulations. The Appellants have not contended nor are we inclined to hold that the provisions of CPC are stricto sensu applicable to the State Commission. But we have noted that Section 94(1) of the said Act states that while reviewing its decisions, directions and orders, the Appropriate Commission shall have same powers as are vested in CPC. Even though CPC cannot be held to be stricto sensu applicable to the State Commission, it can act as a guiding light as rightly stated by the State Commission in its affidavit dated 02/08/2016 filed in this Tribunal.”

According to the above judgement, Order 47 Rule 5 can act as the guiding principle for deciding the issue of quorum with regard to review of its own decisions, directions and orders by the Commission.

12. The general principle as per the CPC is that a review petition must always be heard by the same Court/Bench. However, there are situations in which this is not possible particularly in the present case where the Chairperson of the Hon'ble Commission who signed the orders in the main petitions is unavailable due to reason of superannuation. For the said situation, Order 47 Rule 5 provides that if a judge or



judges or any one of the judges who passed the decree or made the order, a review of which is applied for, such judge or judges or any of them shall hear the review application, and no other judge or judges of the court shall hear the same, unless the judge or judges is not or are not precluded from absence or other cause for a period of six months next after the decree or order is made. In the case of *Malthesh Gudda Pooja vs. State of Karnataka* [(2011)15 SCC 330], the Hon'ble Supreme Court has interpreted the terms "absence or other causes for a period of six months" in Order 47 Rule 5 in the following terms:

"16. Order 47 Rule 5 of the Code provides that the review petition shall be heard only by the Judges who passed the order if the said Judges continues or continue attached to the Court (at the time when the application for review is made) and are not precluded by absence or other cause from considering the application for a period of six months. The words "continue attached to the Court" mean available to perform normal duties and has not been transferred or away on deputation. The words "absence or other cause for a period of six months" in Order 47 Rule 5 of the Code and the words "by reason of death, retirement or absence" in Chapter 3 Rule 5 of the High Court Rules, in essence refer to the same causes, due to which the review application cannot be heard by the same Bench which passed the original order. As Chapter 3 Rule 5 of the High Court Rules does not specify the period of "absence" but it is clear from the context that it does not refer to casual absence. Therefore, it is appropriate to interpret the said words as "absence for a period of six months next after the application" by taking guidance from Order 47 Rule 5 of the Code.

.....

18. Order 47 Rule 5 of the Code and Chapter 3 Rule 5 of the High Court Rules require, and in fact mandate that if the Judges who made the order in regard to which review is sought continue to be the Judges of the Court, they should hear the application for review and not any other Judges unless precluded by death, retirement or absence from the Court for a period of six months from the date of the application.....

20..... It is only where both Judges are not available (due to the reasons mentioned above) the applications for review will have to be placed before some other Bench as there is no alternative. But when the Judges or at least one of them, who rendered the judgement, continues to be members or member of the court and available to perform normal duties, all efforts should be made to place it before them. The said requirement should not be routinely dispensed with."

The Hon'ble Delhi High Court in *Rajiv Lochan v. Narender Nath* {AIR 2004 Del 48} has also observed as under:



“9.....Ideally the application for review should be answered by the Court which passes the decree or order and it is for the reasons that he is considered to be the best judge/person to appreciate, consider and answer the said application, he having himself passed the order or' decree sought to be reviewed. However, once such judge/presiding officer is not available owing to various reasons, viz. transfer, superannuation, death and alike reasons the other competent court is authorized and empowered to deal with the review application and the application cannot be dismissed merely on the ground that the said judge is no longer in position.....”

13. In the light of the above judgement, it emerges that the review petition should be placed before the same judge or judges who heard the main petition and passed the order of which review is sought. In terms of Order 47 Rule 5, only in case of the non-availability of the judges or judge who passed the order in the main petition on account of death, superannuation or absence from the court for a period of six months, the review petition may be placed before some other bench but if the judges or at least one of them continues to be members or member of the court, all efforts should be made to place the review petition before them.

14. In some of the cases, the orders were passed with ex-Chairperson as part of the quorum. After the superannuation of ex-Chairperson, the review petitions against these orders were listed for hearing before a quorum consisting of the remaining members. Shri Sanjay Sen, learned senior counsel has pleaded that as per the principle of stare decisis, a bench of lesser quorum cannot disagree or dissent from the view taken by a larger quorum and in the light of the settled legal position, the review petition should be heard by a quorum of equal number of Members who had passed the orders whose review have been sought.

15. We need to discuss the legal position of quorum for hearing the review petitions as interpreted by different courts and Tribunals. The Privy Council considered and decided the issue in Maharajah Moheshur Sing Vs. Bengal Government {(1857-60) 7 MIA 283} as under:



“16. Let us now address our attention to the Regulations which have passed relative to the question of granting a review. It must be borne in mind that a review is perfectly distinct from an appeal; that is quite clear from all these Regulations that the primary intention of granting a review was a reconsideration of the same subject by the same Judge, as contradistinguished to an appeal which is a hearing before another Tribunal. We do not say that there might not be cases in which a review might take place before another and a different Judge; because death or some other unexpected and unavoidable cause might prevent the Judge who made the decision from reviewing it; but we do say that such exceptions are allowable only ex necessitate. We do say that in all practicable cases the same Judge ought to review....”

As per the above judgement, review should be heard by the judge who passed the order and only in cases of necessity arising out of death or some other unexpected or unavoidable causes, review might take place before another and different judge.

16. Hon'ble Supreme Court in State of Orissa and Ors. vs. Commissioner of Land Records & Settlement, Cuttack and Ors. {(1998) 7 SCC 162} adverting to the decision of the Privy Council as quoted above observed as under:

“29. It is, therefore, clear that the same Judge who disposes of a matter, if available, must “review” the earlier order passed by him inasmuch as he is best suited to remove any mistake or error apparent on the fact of his own order. Again, he alone will be able to remember what was earlier argued before him or what was not argued. In our opinion, the above principle equally applicable in respect of orders of review passed by quasi-judicial authorities.”

17. In Ratanlal Nahata & etc. Vs. Nandita Bose & etc. {AIR 99 Calcutta 29}, Hon'ble High Court of Calcutta examined the scope of Order 47 Rule 1 read with the Calcutta High Court Rules and came to the following conclusion:

“In view of the above discussion we hold that-

1. Order 47 Rule 5 of the Code of Civil Procedure although ipso facto no application in relation to the writ proceedings or proceedings on the Original or Appellate side of the Court, the principle laid down therein may be applied;



2. In a case where one of the learned judges attached to the Bench is available, he may issue the rule but the matter on merit must be heard by a Division Bench of two judges or such number of judges as the Hon'ble Chief Justice may constitute;

3. The Hon'ble Chief Justice has the unfettered jurisdiction in the matter of constitution of Benches in all matters including a review jurisdiction;

4. As a matter of propriety, a judge who is still attached to the court should be made a party to hear the review application unless exceptional situation arises which in the opinion of the Hon'ble Chief Justice would be subversive to imparting justice to the litigation keeping in view the principle that justice not only be done but manifestly seem to be done.”

18. The Appellate Tribunal for Electricity in its judgement dated 30.3.2017 in Torrent Power Ltd. Vs GERC & Others and related appeals rejected the plea that if the original tariff petition was heard by two members, the review petition can be heard by three members including the Chairperson. Relevant para of the judgement is extracted as under:

“55. It is submitted that there is no provision under the said Act which provides for Benches of the State Commission. The State Commission operates as one body. We have in light of the Delhi High Court's judgement in Kwaliti Restaurant already rejected this submission. It is urged that conjoint reading of Section 92(2) and Regulation 17 of the GERC Regulations indicates that the Chairperson or any member, if present shall attend the proceedings and be part of the decision making process. It is submitted that ideal situation would be that all the three members who have distinct qualifications should participate. It is contended that out of necessity, if there is a vacancy of one member, the other two members hear the matter. It is submitted that in this case, the Chairperson's post was vacant and by the time the review petition was filed the post of Chairperson was duly filled and, therefore, to carry out the intent and objective of the mandate provided by the said Act, the Chairperson was made part of the proceedings. We find no hesitation in rejecting this submission. When the two members had passed the tariff order were available there was no reason for the Chairperson to join the review proceedings on the specious ground of carrying out the intent of the said Act. This is opposed to basic principle underlying the concept of review. There is no need to assume that the two Members who passed the original order would not be able to appreciate the alleged important issues. In fact, they are best suited to deal with the contentions raised in the review petition and find out whether there is any error apparent on the face of the record.”

Accordingly, the Hon'ble Tribunal set aside the order of the GERC and remanded the matter in the following terms:

“57. In the circumstances, we set aside the impugned orders dated 16/06/2016 and 01/07/2016 passed by the State Commission. We remand the matter to the State





Commission. We direct the Members who passed the original tariff order to hear the review petitions afresh and pass appropriate order thereon as early as possible and at any rate within a period of four months from the date of receipt of this order.”

19. Section 93 of the Act provides that existence of a vacancy or defect in constitution of the Commission shall not invalidate the proceedings before the Commission. Section 93 is extracted as under:

“93. **Vacancies, etc., not to invalidate proceedings.** – No act or proceeding of the Appropriate Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Appropriate Commission.”

The Appellate Tribunal has dealt with the issue in its judgement dated 30.3.2017 in Torrent Power Ltd. Vs GERC & Others and related appeals as under:

“52.....The word ‘vacancy’ used in Section 93 and Regulation 89 also relates to the constitution of the Commission. Neither Section 93 nor Regulation 89 refers to quorum. Undoubtedly, if a Member retires, or dies or on some such ground is unavailable, some other Member or Members will have to decide the review petition as the doctrine of necessity will then spring into action. But, not otherwise. The submission that Section 93 and regulation 89 will save the impugned order must, therefore, fail.”

20. From the judgement dated 30.3.2017 in Torrent Power Ltd. Vs GERC & Others and related appeals, it emerges that while the existing members, who passed the original order, if available shall only hear and dispose of the review petition arising out of that order and no new member can be associated, in case of the non-availability of any member who heard and passed the order under review, some other member will decide the review as per the doctrine of necessity.

21. On perusal of the judicial decisions on review as discussed above, the following principles emerge:

(a) CPC is not *stricto sensu* applicable to proceedings of the Commission which has to be guided by the procedure with regard to its conduct of business as



specified by the Commission. However, the Commission may be guided by the provisions of the CPC.

(b) Order 47 Rule 1 of the CPC provides that the judge or judges or any of them who heard and passed the order remain(s) attached with the court, the said judge or judges or any one of them shall only hear and dispose of the review petition and no other judge or judges will deal with the review petitions.

(c) In a case where one of the judges attached to the Bench is available, he may issue the rule but the matter on merit must be heard by a Division Bench of two judges or such number of judges as the Hon'ble Chief Justice may constitute.

(d) Doctrine of necessity springs into action where one or more of the judges who heard the main matter are not available by virtue of death, superannuation or other unavoidable grounds, and in those cases, some other judge or judges shall hear the review petition.

22. In the light of the provisions of the Act, CBR, provisions of Order 47 Rule 1 & 5 of the CPC and the judgements on the issue of review, we decide the issue of quorum for hearing the review petitions by the Commission as under:

(a) The Commission shall be guided by the principles given in the provisions of Section 114 of CPC and Order 47 thereunder while dealing with the review petitions.

(b) If the members constituting the quorum which heard and passed the order in the main petition are available, those members only shall hear and issue



order in the review petition. No other member shall be associated at the review stage.

(c) It is only when a member or members who heard the main petition as part of the quorum is or are not available on account of death or superannuation, or absence for a period of 6 months, then only the Chairperson shall constitute a quorum to hear the review petition which shall consist of equal number of members including the members available who passed the order in the main petition.

(d) If on account of a vacancy or vacancies in the Commission, it is not possible to constitute a quorum equal to the quorum which heard and passed the order in the main petition, the Chairperson shall constitute a quorum of lesser number of members (subject to minimum of two members) including the members available who passed the order in the main petition and such quorum shall deal with the review petition.

23. The review petitions shall be listed before the appropriate quorums in terms of the principles as decided in para 20 above.

**sd/-**  
**(Dr. M.K. Iyer)**  
**Member**

**sd/-**  
**(A. S. Bakshi)**  
**Member**

**sd/-**  
**(A. K. Singhal)**  
**Member**

**sd/-**  
**(P.K. Pujari)**  
**Chairperson**

