

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Interlocutory Application No. 80/IA/2021  
In  
Petition No. 405/MP/2019**

**Coram:  
Shri P.K. Pujari, Chairperson  
Shri I. S. Jha, Member  
Shri Arun Goyal, Member  
Shri P.K.Singh, Member**

**Date of Order: 31<sup>st</sup> December, 2021**

**In the matter of**

An Application under Section 94 of the Electricity Act, 2003 read with Regulation 103A and 114 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and Section 152 of Code of Civil Procedure Code, 1908 for clarification/ rectification of order dated 22.3.2021.

**And**

**In the matter of**

**Haryana Power Purchase Centre,  
Shakti Bhawan, Sector – 6, II Floor,  
Panchkula-134 109, Haryana**

**...Applicant**

**Vs.**

**1. GMR Kamalanga Energy Limited,  
New Shakti Bhawan,  
Building No. 302-New Uddan Bhawan,  
Opposite Terminal -3, Indira Gandhi International Airport,  
New Delhi-110 037**

**2. GMR Energy Limited,  
Skip House, 25/1, Museum Road,  
Bangalore-560 025**

**...Respondents**

**Parties Present**

Ms. Pavitra Balakrishnan, Advocate, HPPC  
Shri Vishrov Mukerjee, Advocate, GKEL

**ORDER**

The Applicant, Haryana Power Purchase Centre, has filed the present Interlocutory Application ('IA') under Section 94 of the Electricity Act, 2003

(hereinafter referred to as 'the Act') read with Regulation 103A and 114 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (hereinafter referred to as 'the Conduct of Business Regulations') and Section 152 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC, 1908') for clarification/ rectification of the order dated 22.3.2021 passed in Petition No. 405/MP/2019 on behalf of the Respondents No. 1 to 3 therein. The Applicant has made the following prayers:

*“(a) Allow the present Application and make necessary clarification/rectification to the order dated 22.3.2021 to the effect that the cost of transportation of fly ash within a distance of 100 kms would be borne by the generator; and*

*(b) Pass such other or further order/relief(s) which the Commission deems fit and proper under the facts and circumstances of the present case...”*

## **Background**

2. GMR Kamalanga Energy Limited and GMR Energy Limited, had jointly filed Petition No. 405/MP/2019 under Section 79 of the Act read with statutory framework governing procurement of power through competitive bidding and (i) Article 10 of the Power Purchase Agreement ('PPA') dated 9.11.2011 executed between GMR Kamalanga Energy Limited and Bihar State Electricity Board, and (ii) Article 13 of the PPA dated 12.3.2009 executed between GMR Energy Limited and PTC India Limited with back-to-back PPA between PTC India Limited and Haryana Distribution Companies (Dakshin Haryana Bijili Vitran Nigam Limited, Uttar Haryana Bijili Vitran Nigam Limited and Haryana Power Generation Corporation Limited), seeking determination of compensation on account of expenditure incurred towards transportation of fly ash and for computation of carrying cost thereon. The said Petition had been filed in terms of liberty granted by the Commission in its order dated 21.2.2018 in Petition No. 131/MP/2016, whereby, it had been held in-principle that levy of charges for transportation of fly ash pursuant to the Notification dated

25.1.2016 of Ministry of Environment, Forest and Climate Change ('MoEF&CC') was Change in Law event.

3. The Commission, after having heard the parties and considering their respective submissions, decided the Petition No. 405/MP/2019 vide its order dated 22.3.2021 whereby the Commission, *inter alia*, held as under:

*“21. Accordingly, the Petitioners shall be entitled to receive full amount paid to Ashtech (India) Pvt. Ltd and Samal Builder Pvt. Ltd. for fly ash transported within a radius of 100 km along with GST. As regards claim towards fly ash transported for distance beyond 100 km (and up to 300 km), the Petitioners vide their affidavit dated 14.2.2020 have submitted that they have claimed Rs 28,34,843.05. From the invoices submitted by the Petitioner, we observe that the Petitioners have claimed full cost of Rs. 28,34,843.05 incurred towards transportation of fly ash beyond 100 km. As per MoEF&CC notification dated 25.1.2016, cost of transportation beyond the radius of 100 km and up to 300 km shall be shared between the user and the coal or lignite based thermal power plant equally. Accordingly, the Petitioners shall be entitled to receive only 50% of the claimed amount from the Respondent Discoms.....”*

4. Accordingly, in the aforesaid order, the Commission has held that in terms of MoEF&CC Notification dated 25.1.2016, the Petitioner shall be entitled to receive full amount paid towards transportation of fly ash for the distance within a radius of 100 km along with GST and for the distance beyond the radius of 100 km and up to 300 km, the Petitioners shall be entitled to receive only 50% of the amount paid towards transportation of fly ash from the Distribution Companies, including Haryana Utilities under the PPAs.

5. The present application has been filed by the Applicant, HPPC seeking rectification/ clarification of the aforesaid order, in particular, relating to paragraph 21 of the order, inasmuch as it holds that the Petitioners shall be entitled to receive the entire amount claimed for the transportation of fly ash within 100 km radius.

### **Hearing Dated 21.12.2021**

6. The matter was listed for admission on 21.12.2021. During the course of hearing, learned counsel for the Applicant submitted that in terms of the various Notifications issued by MoEF&CC, the Petitioner/ thermal generating station was mandated to attain 100% ash utilization by 2014 and that the failure of the Petitioner to comply with the statutory obligation of utilization of fly ash and the cost incurred on account of the same could not have been passed on to the Haryana Utilities. The learned counsel further added that MoEF&CC Notification dated 25.1.2016 clearly mandates the transportation expenses up to 100 km to be absorbed by the generator. Accordingly, the Commission may allow the present IA and make necessary clarification/ rectification to the order dated 22.3.2021 to the effect that the cost of transportation of fly ash within a distance of 100 km would be borne by the generator.

7. *Per contra*, learned counsel for GMR Kamalanga Energy Limited submitted that the present application is a review in the garb of the clarification/ rectification application and thus, ought not to be allowed. The learned counsel submitted that the MoEF&CC Notification dated 25.1.2016 has been held as Change in Law by the Commission in case of the Petitioner under the Power Purchase Agreements vide order dated 21.2.2018 in Petition No. 131/MP/2016, which has not been challenged by the Applicant. It was submitted by the learned counsel that the Applicant is deliberately attempting to create confusion between the requirement of fly ash utilization and the cost towards transportation of fly ash, which was imposed upon the thermal generating station only vide MoEF&CC Notification dated 25.1.2016.

8. After hearing the learned counsels for the Applicant and GKEL, the matter was reserved for order on 'admissibility'.

## **Analysis and Decision**

9. We have examined the matter. The Applicant has sought clarification/rectification of the Commission's order dated 22.3.2021 in Petition No. 405/MP/2019, in particular relating to paragraph 21 of the order, whereby the Commission has held that Petitioner/ GKEL shall be entitled to receive the entire amount claimed towards transportation of fly ash within 100 km radius from the distribution companies including Haryana Utilities under the PPAs. The Applicant has prayed that the aforesaid finding may be clarified/ rectified to the effect that the cost of transportation of fly ash within a distance of 100 km would be borne by GKEL itself. For the above purpose, the Applicant has sought to invoke Section 94 of the Act read with Regulation 103A and Regulation 114 of the Conduct of Business Regulations and Section 152 of the CPC, 1908. Thus, it would be relevant to refer to these provisions at this stage.

10. Section 94 of the Act provides for powers of the Appropriate Commission, which reads as thus:

***“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: -***

*(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 Commission 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....”*

11. Section 94(1) of the Act provides that the Commission shall for the purpose of any inquiry or proceedings under the Act have the same powers as are vested in a

civil court under CPC, 1908 in respect of matters (a) to (g) as specified therein and under Section 94(2) of the Act provides that the Commission shall have the powers to pass such interim order in any proceedings, hearing or matter before it as the Commission may consider appropriate.

12. Regulation 103A and Regulation 114 of the Conduct of Business Regulations read as under:

***“Amendment of order***

*103A 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.*

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***General power to amend***

*114. The Commission may, at any time and on such terms as to costs or otherwise, as it may think fit, amend any defect or error in any Proceedings before it, and all necessary amendments shall be made for the purpose of determining the real question or issue arising in the Proceedings.”*

13. Thus, under Regulation 103A of the Conduct of Business Regulations, the Commission is empowered to amend its order for correction of clerical or arithmetic mistakes therein or the errors arising from any accidental slip or omission either by its own motion or on the application of any of the parties. Under Regulation 114, the Commission is empowered to amend any defect or error in any proceedings before it at any time and all the necessary amendments shall be made for the purpose of determining the real question or issue arising in the proceedings.

14. Section 152 of the CPC, 1908 reads as under:

***“Section 152. Amendment of judgments, decrees or orders***

*Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.”*

15. Regulation 103A of the Conduct of Business Regulations is *pari materia* with Section 152 of the CPC, 1908. Section 152 of CPC, 1908 empowers the court to

correct any clerical or arithmetical mistakes or errors arising from any accidental slips or omission in the judgment, decrees or orders at any time either of its own motion or on the application of any of the parties.

16. The Applicant has sought to rely upon the MoEF&CC Notifications dated 14.9.1999, 27.10.2003 and 3.11.2009, which mandated the thermal generating stations to attain 100% ash utilization by 2014 and further to contend that MoEF&CC Notification dated 25.1.2016 cannot be considered as Change in Law as the said notification is a consequence of the failure of the Petitioner to attain 100% ash utilization within the prescribed period as provided in earlier notifications. The Applicant has not brought out any clerical/ arithmetic error or an error arising out from any accidental slip or omission but has proceeded with the grounds/ arguments on merits to justify the rectification/ clarification as prayed for. The provisions under which this Application has been filed, empower the Commission/ court to correct only clerical or arithmetic mistakes or the errors arising from any accidental slip or omission in the orders and these provisions cannot be invoked to modify, alter or add to the terms of the original order so as to in effect pass an effective judicial order after the judgment in the case. In this regard, the Hon'ble Supreme Court in *Jayalakshmi Coelho v. Oswald Joseph Coelho* [2001 (4) SCC 181], held as under:

*“.....The basis of the provision under Section 152 C.P.C. is found on the maxim Actus Curiae Neminem Gravabit i.e. an act of Court shall prejudice no man (Jenk Cent-118) as observed in a case reported in AIR 1981 Guwahati 41, The Assam Tea Corporation Ltd. versus Narayan Singh and another. Hence, an unintentional mistake of the Court which may prejudice cause of any party must be rectified. In another case reported in AIR 1962 S.C. 633 I.L. Janakirama Iyer and others etc. etc. versus P.M. Nilakanta Iyer it was found that by mistake word net profit was written in the decree in place of mesne profit. This mistake was found to be clear by looking to the earlier part of the judgment. The mistake was held to be inadvertent. In *Bhikhi Lal and others versus Tribeni and others* AIR 1965 S.C. 1935 it was held that a decree which was in conformity with the judgment was not liable to be corrected. In another case reported in AIR 1966 S.C. 1047 *Master Construction Co. (p) Ltd. versus State of Orissa and another* it has been observed that arithmetical mistake is a mistake of calculation, a clerical mistake is a*

mistake in writing or typing whereas an error arising out of or occurring from accidental slip or omission is an error due to careless mistake on the part of the Court liable to be corrected. To illustrate the point, it has been indicated as an example that in a case where the order may contain something which is not mentioned in the decree would be a case of unintentional omission or mistake. Such omissions are attributable to the Court who may say something or omit to say something which it did not intend to say or omit. No new arguments or re-arguments on merits are required for such rectification of mistake. In a case reported in (1999) 3 S.C.C. 500 Dwarakadas Versus State of M.P. and Another this Court has held that the correction in the order or decree should be of the mistake or omission which is accidental and not intentional without going into the merits of the case. It is further observed that the provisions cannot be invoked to modify, alter or add to the terms of the original decree so as to in effect pass an effective judicial order after the judgment in the case...

17. A similar view was taken by the Hon'ble Supreme Court in the case of State of Punjab v. Darshan Singh [(2004) 1 SCC 328], wherein it held as under:

"12. Section 152 provides for correction of clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission. The exercise of this power contemplates the correction of mistakes by the court of its ministerial actions and does not contemplate passing of effective judicial orders after the judgment, decree or order. The settled position of law is that after the passing of the judgment, decree or order, the same becomes final subject to any further avenues of remedies provided in respect of the same and the very court or the tribunal cannot and, on mere change of view, is not entitled to vary the terms of the judgments, decrees and orders earlier passed except by means of review, if statutorily provided specifically therefor and subject to the conditions or limitations provided therein. The powers under Section 152 of the Code are neither to be equated with the power of review nor can be said to be akin to review or even said to clothe the court concerned under the guise of invoking after the result of the judgment earlier rendered, in its entirety or any portion or part of it. The corrections contemplated are of correcting only accidental omissions or mistakes and not all omissions and mistakes which might have been committed by the court while passing the judgment, decree or order. The omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152 as if it is looking into it for the first time, for which the proper remedy for the aggrieved party, if at all, is to file an appeal or revision before the higher forum or review application before the very forum, subject to the limitations in respect of such review. It implies that the section cannot be pressed into service to correct an omission which is intentional, however erroneous that may be. It has been noticed that the courts below have been liberally construing and applying the provisions of Sections 151 and 152 of the Code even after passing of effective orders in the lis pending before them. No court can, under the cover of the aforesaid sections, modify, alter or add to the terms of its original judgment, decree or order".



18. Further, the Hon'ble Supreme Court has also dealt with the issue of maintainability of the application for clarification or rectification touching upon the merits of the case in Ram Chandra Singh v. Savitri Devi & Ors., [(2004) 12 SCC 713], the relevant extract of which read as under:

*“13. It is now well settled that an application for clarification or modification touching the merit of the matter would not be maintainable. A court can rehear the matter upon review of its judgment but, therefore, the procedure laid down in Order 40 Rules 3 and 5 of the Supreme Court Rules, 1966 as also Article 137 of the Constitution are required to be complied with as review of a judgment is governed by the constitutional as well as statutory provisions.*

*14. The applicants herein did not appear at the time of hearing. They, as noticed hereinbefore, have not to contend that there exist errors in the judgment which are apparent on the face of the records except the typographical. The prayer of the applicant is that apart from the corrections which are required to be made in the judgment, as noticed hereinbefore, the merit of the matter may also be considered, inter alia, with reference to the pleadings of the parties. Such a course of action, in our opinion, is not contemplated in law. If there exist errors apparent on the face of the record, an application for review would be maintainable but an application for clarification and/or modification cannot be entertained unless it is shown that the same is necessary in the interest of justice. An application which is in effect and substance an application for review cannot be entertained dehors the statutory embargo contained in Order 40 Rules 3 and 5 of the Supreme Court Rules, 1966.*

*15. In Gurdip Singh Uban [(2000) 7 SCC 296] the law has been laid down in the following terms: (SCC p. 309, para 17):*

*“17. ... This procedure is meant to save the time of the Court and to preclude frivolous review petitions being filed and heard in open court. However, with a view to avoid this procedure of ‘no hearing’, we find that sometimes applications are filed for ‘clarification’, ‘modification’ or ‘recall’ etc. not because any such clarification, modification is indeed necessary but because the applicant in reality wants a review and also wants a hearing, thus avoiding listing of the same in chambers by way of circulation. Such applications, if they are in substance review applications, deserve to be rejected straight away inasmuch as the attempt is obviously to bypass Order 40 Rule 3 relating to circulation of the application in chambers for consideration without oral hearing. By describing an application as one for ‘clarification’ or ‘modification’, — though it is really one of review — a party cannot be permitted to circumvent or bypass the circulation procedure and indirectly obtain a hearing in the open court. What cannot be done directly cannot be permitted to be done indirectly.”*

*....*  
*18. Thus, the applicants cannot be permitted to raise any contention which had not been raised before this Court at the hearing.*

*19. It is no doubt true that in appropriate cases this Court may pass an order ex debito justitiae by correcting mistakes in the judgment but inherent power of this Court can be exercised only when there does not exist any other provision in that behalf. Clerical or arithmetical mistake or an error arising from an accidental slip or omission and to vary its judgment so as to give effect to its meaning and intention is permissible as has been held in Samarendra Nath Sinha [(1967) 2 SCR 18 : AIR 1967 SC 1440] . But in this case nothing has been shown as to why inherent power of this Court is required to be exercised except for correcting the typographical errors...”*

19. In view of the above observations, the present IA for rectification/ clarification of the order dated 22.3.2021 passed in Petition No. 405/MP/2019, which seeks to advance the grounds/ arguments touching on the merits of the case and in effect reconsideration of the Commission’s finding in the order dated 22.3.2021, cannot be entertained in the present form and is fit to be disposed of at the stage of admission itself.

20. Accordingly, IA No. 80/IA/2021 in Petition No. 405/MP/2019 is disposed of in terms of the above.

**Sd/-  
(P.K.Singh)  
Member**

**sd/-  
(Arun Goyal)  
Member**

**sd/-  
(I.S. Jha)  
Member**

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