

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

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

**Review Petition No.6/RP/2022
in
Petition No.157/MP/2015 and Petition No. 121/MP/2017**

and

**Review Petition No.9/RP/2022
in
Petition No.157/MP/2015 and Petition No. 121/MP/2017**

and

**Review Petition No.10/RP/2022
in
Petition No.157/MP/2015 and Petition No. 121/MP/2017**

Date of Order: 13th May, 2022

**Review Petition No.6/RP/2022
in
Petition No.157/MP/2015 and Petition No. 121/MP/2017**

In the matter of

Petition under Section 94(1)(f) read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 and Regulation 103 (1) of the CERC (Conduct of Business) Regulations, 1999 for Review of Common Order dated 20.12.2021 of Central Electricity Regulatory Commission in Petition No. 157/MP/2015 along with IA No. 53 of 2021 and in Petition No. 121/MP/2017 along with IA No. 64 of 2021 filed by Coastal Gujarat Power Limited.

**And
In the matter of**

Gujarat Urja Vikas Nigam Limited,
Sardar Patel Vidyut Bhawan,
Race Course Circle,
Vadodara-390 007

...Review Petitioner

Vs.



1. Coastal Gujarat Power Limited,
C/o The Tata Power Company Limited,
34, Sant Tuka Ram Road, Carnac Bunder,
Mumbai-400 021
2. Maharashtra State Electricity Distribution Company Limited,
4th Floor, Prakashgad, Plot No. G-9, Bandra (East),
Mumbai-400 051, Maharashtra
3. Ajmer Vidyut Vitaran Nigam Limited,
Hathi Bhata, Old Power House,
Ajmer, Rajasthan
4. Jaipur Vidyut Vitaran Nigam Limited,
Vidyut Bhawan, Janpath,
Jaipur, Rajasthan
5. Jodhpur Vidyut Vitaran Nigam Limited,
New Power House, Industrial Area,
Jodhpur, Rajasthan
6. Punjab State Power Corporation Limited,
PP&R, Shed T-1, Thermal Design,
Patiala – 147 001
7. Uttar Haryana Bijli Vitran Nigam Limited,
Vidyut Sadan, Plot No. C-16, Sector-6,
Panchkula-134112, Haryana.
8. Dakshin Haryana Bijli Vitran Nigam Limited,
Vidyut Nagar, Vidyut Sadan,
Hissar, Haryana-125005

...Respondents

Review Petition No.9/RP/2022
in
Petition No.157/MP/2015 and Petition No. 121/MP/2017

In the matter of:

Petition under Section 94(1)(f) read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 and Regulation 103 (1) of the CERC (Conduct of Business) Regulations, 1999 for Review of Common Order dated 20.12.2021 of Central Electricity Regulatory Commission in Petition No. 157/MP/2015 along with IA No. 53 of 2021 and in Petition No. 121/MP/2017 along with IA No. 64 of 2021 filed by Coastal Gujarat Power Limited.

And

In the matter of:



1. Ajmer Vidyut Vitaran Nigam Limited,
Hathi Bhata, Old Power House,
Ajmer, Rajasthan.

2. Jaipur Vidyut Vitaran Nigam Limited,
Vidyut Bhawan, Janpath,
Jaipur, Rajasthan.

3. Jodhpur Vidyut Vitaran Nigam Limited,
New Power House, Industrial Area,
Jodhpur, Rajasthan.

Through Rajasthan Urja Vikas Nigam Limited,
Vidyut Bhawan, Jyoti Nagar,
Jaipur, Rajasthan – 302005.

...Review Petitioner

Vs

1. Coastal Gujarat Power Limited,
C/o The Tata Power Company Limited,
34, Sant Tuka Ram Road, Carnac Bunder,
Mumbai-400 021.

2. Gujarat Urja Vikas Nigam Limited,
Sardar Patel Vidyut Bhawan,
Race Course Circle,
Vadodara-390 007.

3. Maharashtra State Electricity Distribution Company Limited,
4th Floor, Prakashgad, Plot No. G-9, Bandra (East),
Mumbai-400 051, Maharashtra.

4. Punjab State Power Corporation Limited,
PP&R, Shed T-1, Thermal Design,
Patiala – 147 001.

5. Uttar Haryana Bijli Vitran Nigam Limited,
Vidyut Sadan, Plot No. C-16, Sector-6,
Panchkula-134112, Haryana.

6. Dakshin Haryana Bijli Vitran Nigam Limited,
Vidyut Nagar, Vidyut Sadan,
Hissar, Haryana-125005.

...Respondents

Review Petition No.10/RP/2022
in
Petition No.157/MP/2015 and Petition No. 121/MP/2017

In the mater of:

Petition under Section 94(1)(f) read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 and Regulation 103 (1) of the CERC (Conduct of Business) Regulations, 1999 for Review of Common Order dated 20.12.2021 of Central Electricity Regulatory Commission in Petition No. 157/MP/2015 along with IA No. 53 of 2021 and in Petition No. 121/MP/2017 along with IA No. 64 of 2021 filed by Coastal Gujarat Power Limited.

And

In the matter of:

1.Uttar Haryana Bijli Vitran Nigam Limited,
Vidyut Sadan, Plot No. C-16, Sector-6,
Panchkula-134112, Haryana.

2. Dakshin Haryana Bijli Vitran Nigam Limited,
Vidyut Nagar, Vidyut Sadan,
Hissar, Haryana-125005.

Through Haryana Power Purchase Centre,
Shakti Bhawan, Second Floor, Sector – 6,
Panchkula, Haryana – 134 109.

...Review Petitioner

Vs.

1. Coastal Gujarat Power Limited,
C/o The Tata Power Company Limited,
34, Sant Tuka Ram Road, Carnac Bunder,
Mumbai-400 021.

2. Gujarat Urja Vikas Nigam Limited,
Sardar Patel Vidyut Bhawan,
Race Course Circle,
Vadodara-390 007.

3. Maharashtra State Electricity Distribution Company Limited,
4th Floor, Prakashgad, Plot No. G-9, Bandra (East),
Mumbai-400 051, Maharashtra.

4. Ajmer Vidyut Vitaran Nigam Limited,
Hathi Bhata, Old Power House,
Ajmer, Rajasthan

5. Jaipur Vidyut Vitaran Nigam Limited,
Vidyut Bhawan, Janpath,
Jaipur, Rajasthan.

6. Jodhpur Vidyut Vitaran Nigam Limited,
New Power House, Industrial Area,
Jodhpur, Rajasthan.

7. Punjab State Power Corporation Limited,
PP&R, Shed T-1, Thermal Design,
Patiala – 147 001.

...Respondents

Parties Present:

Shri Anand K Ganesan, Advocate, GUVNL
Shri Harsha Manav, Advocate, GUVNL
Ms. Shrishti Khindari, Advocate, GUVNL
Ms. Poorva Saigal, Advocate, Rajasthan & Haryana Utilities
Shri Shubham Arya, Advocate, Rajasthan & Haryana Utilities
Shri Ravi Nair, Advocate, Rajasthan & Haryana Utilities
Shri Amit Kapur, Advocate, CGPL
Shri Abhishek Munot, Advocate, CGPL
Shri Tushar Nagar, Advocate, CGPL
Shri Samikrith Road, Advocate, CGPL
Shri Abhay Kumar, Advocate, CGPL
Shri Girish Pednekar, Advocate, CGPL
Shri Prasad Bagade, Advocate, CGPL
Shri S.K.Nair, GUVNL
Shri Kripal Chudasama, GUVNL
Shri Sanjay Mathur, GUVNL

ORDER

The present Review Petitions have filed by the Review Petitioners, Gujarat Urja Vikas Nigam Limited ('GUVNL'), Haryana Power Purchase Centre ('HPPC') and Rajasthan Urja Vikas Nigam Limited ('RUVNL') seeking review of the Commission's order dated 20.12.2021 in Petition No. 157/MP/2015 along with IA No. 53 of 2021 and in Petition No. 121/MP/2017 along with IA No. 64 of 2021 ('Impugned Order') under Section 94(1)(f) of the Electricity Act, 2003 (hereinafter referred to as 'the Act') read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 and Regulation 103

(1) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (hereinafter referred to as 'the Conduct of Business Regulations').

2. The prayers and grounds made by the Review Petitioners are identical in the three Review Petitions. Accordingly, a common order is issued in these three Review Petitions.

Background

3. The Respondent, Coastal Gujarat Power Limited (in short 'CGPL') had filed Petition No. 157/MP/2015 before the Commission under Section 79(1)(b) of the Act read with Article 13.2(b) of the Power Purchase Agreement dated 22.4.2007 (read with Supplemental PPA) seeking adjustment of tariff for increase/ decrease in revenues/costs due to certain "Change in Law" during the operating period for the financial years 2011-12, 2012-13 and 2013-14. The Commission vide order dated 17.3.2017 disposed of the said Petition allowing certain "Change in Law" events.

4. Aggrieved by the said order dated 17.3.2017, the Respondent, GUVNL filed Review Petition No. 22/RP/2017 seeking rectification of errors with regard to Change in Law events, namely, (a) allowing service tax on works contract as a Change in Law; and (b) computation of quantum of coal for considering the compensation for Clean Energy Cess. Considering the submissions of the parties, the Commission in order dated 31.10.2017 allowed the Review Petition.

5. The Commission vide order dated 17.3.2017 had disallowed Gujarat Value Added Tax (Gujarat VAT) subject to outcome of Appeal No. 161 of 2015 pending before the Appellate Tribunal for Electricity (APTEL). On 2.5.2017, CGPL filed Interlocutory Application (IA) No. 26 of 2017 seeking modification of the

Commission's order dated 17.3.2017 pursuant to judgment of APTEL dated 19.4.2017 in Appeal No. 161 of 2015. The Commission, vide order dated 29.1.2018, while allowing the IA allowed Gujarat VAT as Change in Law.

6. The Commission's order dated 17.3.2017 in Petition No. 157/MP/2015, order dated 31.10.2017 in Review Petition No. 22/RP/2017 and order dated 29.1.2018 in IA No. 26 of 2017 were challenged by CGPL before APTEL in Appeal No. 172 of 2017, challenging the disallowances of certain Change in Law events by the Commission.

7. Subsequently, CGPL filed Petition No. 121/MP/2017 seeking reliefs under Change in Law events during the operating period i.e., financial year 2014-15, financial year 2015-16 and financial year 2016-17, towards levy of Swachh Bharat Cess, levy of Krishi Kalyan Cess, Service Tax on transportation of goods by a vessel from a place outside India to the first customs station of landing in India and imposition of mandate under Companies Act, 2013 (Companies Act) to spend a minimum of 2% of the average net profits of the company towards the Corporate Social Responsibility (CSR) Policy. The Commission, after hearing the parties, in its order dated 21.2.2018 in Petition No. 121/MP/2017 allowed levy of Swachh Bharat Cess and Krishi Kalyan Cess on four services availed by CGPL. The Commission, disallowed CGPL's claim for Change in Law on account of imposition of mandate of CSR under the Companies Act, 2013 and carrying cost.

8. Subsequently, the Respondents (except MSEDCL) filed IA No. 71 of 2018 in Petition No. 121/MP/2017 seeking clarification that the quantum of coal to be considered for Change in Law as per order dated 21.2.2018 in Petition No. 121/MP/2017 be based on actual coal consumed subject to the ceiling of the

parameters of SHR of 2050 kCal/kWh with 1% degradation every 10 years, auxiliary consumption of 4.75% and GCV of 5350 kCal/kg. The Commission vide order dated 3.9.2019 allowed the IA No. 71 of 2018 and clarified that CGPL shall be entitled to recover the compensation on account of service tax including Swachh Bharat Cess and Krishi Kalyan Cess on quantum of coal as per actual subject to ceiling based on parameters as decided by the Commission in paragraph 84 of the order dated 6.12.2016 in Petition No. 159/MP/2012 corresponding to the scheduled generation for supply of electricity to the Procurers. If actual generation is less than the scheduled generation, the coal consumed for actual generation based on normative parameters or actual quantum of coal consumed, whichever is lower shall be considered for the purpose of computation of impact of Change in Law events.

9. Aggrieved by the Commission's order dated 21.2.2018 and order dated 3.9.2019 in aforesaid Petitions, CGPL filed Appeal before the APTEL being Appeal No. 154 of 2018 challenging certain disallowances of Change in Law events by the Commission. Appeal No. 172 of 2017 and Appeal No. 154 of 2018 (Appeals) have been decided by APTEL vide its judgment dated 27.4.2021. Except CGPL's claim for Change in Law on account of imposition of mandate of CSR under the Companies Act, 2013, all other claims and contentions of CGPL were accepted by APTEL. Accordingly, the Commission's order dated 17.3.2017, order dated 31.10.2017, order dated 29.1.2018, order dated 21.2.2018 and order dated 3.9.2019 were modified in view of the judgment dated 27.4.2021. In judgment dated 27.4.2021, APTEL directed the Commission to pass necessary consequential orders and ensure that the benefit, to the extent allowed, inures without delay to CGPL.

10. As per the direction of the APTEL, the Commission in its order dated 20.12.2021 had *inter-alia* allowed Change in Law events on actual generation/ injection after adjustment of RRAS and SCED. Relevant portion of the said order dated 20.12.2021 is extracted as under:

“42. The Respondents have contended that computation of coal for coal based levies has to be lower of actual coal consumed or as per normative parameters in the Commission’s Tariff Regulations. It has been further submitted that judgment of APTEL dated 27.4.2021 is required to be read in the context of its earlier judgment dated 13.11.2019 in Appeal No. 136/2016, judgment dated 14.9.2020 in Appeal No.182/2019, judgment dated 3.11.2020 in Appeal No. 168/2019 and in Appeal No. 264/2018. Accordingly, the claims of the Petitioner are required to be revised.

43. We have considered the submissions of the parties. It is noticed that scope of the present remand proceedings is to implement the judgment of APTEL and to pass consequential orders. In view of the limited scope of the present remand proceedings, the Commission cannot read into judgment of APTEL. In its judgment, APTEL has clearly held that relief for Change in Law cannot be linked to normative parameters and has to be on actuals. APTEL has further held that neither the PPA nor the bid documents contemplate relief for Change in Law on normative parameters.

44. Accordingly, to give effect to the judgment of APTEL, the coal consumption to be considered for computing impact of Change in Law events has been delinked from the normative parameters of Tariff Regulations. It is observed that the Petitioner has calculated the quantum of coal eligible for Change in Law impact corresponding to the energy quantum which is lower of actual injection and scheduled generation. However, considering the finding of the APTEL, we deem it appropriate to allow Change in Law impact corresponding to actual injection only.

45. GUVNL has submitted that computation has to be necessarily on 15 minutes time block basis as it is intrinsically connected to settlement period specified under the Grid Code and applicable Regulations. GUVNL has also submitted that there is no rationale in CGPL claiming the consideration of scheduled generation on monthly or annual basis. GUVNL has further submitted that in the past, CGPL has considered the scheduled generation on 15 minute time block basis and it is only in the present remand proceedings that CGPL is seeking computation on monthly or annual basis. Per contra, the Petitioner has submitted that the methodology proposed by GUVNL of considering lower of actual injection or scheduled generation for each 15 minute time block leads to under-recovery of CGPL’s Change in Law compensation as the final compensation is lower than the total of actual injection or scheduled generation calculated on the monthly basis. The Petitioner has further contested that GUVNL’s proposed methodology cannot be made applicable given that CGPL’s billing for energy charges takes place on a monthly basis.

46. We have considered the rival submissions of the parties. We observe that this issue was not raised by either party before the APTEL in various appeals with regard to Change in Law events. It is noticed that the issue raised by the GUVNL regarding scheduled generation on 15-minute time block basis is beyond the scope of the remand proceeding. Therefore, we are not inclined to deal with this issue in the

present remand proceedings. However, having decided that Change in Law impact is required to be calculated based on coal consumed for actual injection only (after delinking from schedule generation), the issue of 15 minute time block-wise or month-wise is of no relevance. The Petitioner is entitled to relief for Change in Law on coal-based levies on actual coal consumed for the actual injection and further adjusted (reduced) by the coal consumption corresponding to energy injected under RRAS-up and SCED.

47. In view of the above and in terms of the judgment of APTEL, the Petitioner is entitled to compensation for Change in Law on coal-related levies such as Clean Energy Cess, BCD, CVD, Service Tax on Ocean Freight on the basis of actual coal consumed adjusted (reduced) by the coal consumption corresponding to energy injected under RRAS-up and SCED. Further, pursuant to introduction of GST regime, Clean Energy Cess has been replaced with GST Compensation Cess and CVD has been subsumed in GST. The Petitioner has billed the Respondents/ Procurers for Clean Energy Cess/GST Compensation Cess, BCD, CVD/ GST, Service Tax on Ocean Freight, etc. on the basis of normative parameters. In IA No. 53/2021 in Petition No. 157/PM/2015 and IA No. 64/2021 in Petition No. 121/MP/2017, the Petitioner has claimed compensation of Rs.1,57,83,28,072/- [Rs.1,56,58,51,296/- (for Clean Energy Cess/ GST Compensation Cess, BCD and CVC/ IGST) in Petition No. 157/MP/2015 + Rs.1,24,76,776/- (for Service Tax on Ocean Freight) in Petition No.121/MP/2017] for the financial year 2011-12 to financial year 2020-21. In support of its claim, the Petitioner has submitted auditor certificates and detailed computations. The Petitioner is entitled to recover compensation after recasting its claim of Rs.1,57,83,28,072/- on the basis of actual coal consumed for the actual injection and further adjusted (reduced) by the coal consumption corresponding to energy injected under RRAS-up and SCED. The Procurers are directed to compensate the Petitioner accordingly in proportion to scheduled generation.”

11. Being aggrieved by the aforesaid findings of the Commission allowing CGPL Change in Law compensation on actual generation/injection after adjustment of RRAS and SCED without taking into consideration the schedule generation, the Review Petitioners, GUVNL, RUVNL and HPPC have filed the instant Review Petitions. The prayers and grounds made by the Review Petitioners are identical in the three Review Petitions. For sake of avoiding the repetition, in this order submissions of only GUVNL have been considered.

Submissions of GUVNL

12. In support of its plea for review of the Impugned Order, GUVNL has mainly submitted the following:

(a) The Impugned Order allows Change in Law on actual generation/ injection after adjustment of RRAS and SECD without taking into consideration the scheduled generation which is beyond the scope of the remand directions contained in the judgment of APTEL dated 27.4.2021.

(b) The Impugned Order modifies the earlier order which provided for consideration of scheduled or actual generation whichever is lower. The impugned order fails to appreciate that the issue considered by APTEL was computation of coal quantum and the amount of generation was never in issue.

(c) The issue of actual or scheduled generation whichever is lower was decided by the Commission in its order dated 17.3.2017 in Petition No. 157/MP/2015 and order dated 21.8.2018 in Petition No. 121/MP/2017. However, this aspect was not challenged by CGPL in the Appeal before APTEL. Since the issue had not been raised by CGPL in the Appeal, it was not subject matter of appeal and cannot be subject matter of remand.

(d) CGPL itself in the remand proceedings before the Commission had proceeded on the basis that generation has to be considered the lower of actual generation or scheduled generation. The issue sought to be raised by CGPL was consideration of scheduled generation on monthly or annual basis instead of 15 minutes time block. This issue was not raised by GUVNL but by CGPL which has suddenly sought compensation based on scheduled generation on monthly basis.

(e) In fact, CGPL had after the order dated 17.3.2017 and dated 21.8.2018 raised invoices on GUVNL for Change in Law based on lower of actual or schedule injection, based on 15 minutes time blocks, and the stand has been accepted by CGPL. Therefore, the Commission's decision is contrary to the pleadings of the parties and the Commission has granted relief beyond what CGPL had sought.

(f) There is no rationale to allow Change in Law for actual injection when the same is more than scheduled generation. The procurers are receiving energy only up to the scheduled generation and for generation beyond scheduled generation, CGPL may be entitled to receive or pay UI charges as the case may be.

(g) The Procurers cannot compensate CGPL in regard to generation not actually received by the Procurers. Even if the Change in Law had not occurred, CGPL was not entitled to any amount from the Procurers in regard to such excess generation. APTEL has only referred to compensation for actual impact which necessarily means the actual impact of supplying electricity to Procurers and cannot relate to the generation which is not for the Procurers.

(h) APTEL in Paragraph 118 has raised the issue of the fact that there should not be contrary approach taken by the Commission. Thus, the different approach taken by the Commission in case of CGPL contrary to Sasan Power Limited is contrary to the principle decided by APTEL. Therefore, the same is an error apparent on face of record and even otherwise, sufficient ground for review.

(i) When CGPL itself had accepted that the consideration was to be of scheduled generation and this issue was not subject matter of appeal before APTEL, the Commission in the remand proceedings cannot modify the earlier orders on aspects outside the scope of the remand. In support, reliance has been placed on the judgments of the Hon`ble Supreme Court and Hon`ble High Courts in the cases of Mohan Lal Vs Anandibai [(1971) 1SCC 813], Paper Products Ltd. v CCE [(2007) 7 SCC 352], K.P.Dwivedi v State of U.P. [(2003) 12 SCC 752], Tirupati Balaji Developers Private Limited v State of Bihar [2004 (4) SCC], Smt Bidya Devi v Commissioner of Income Tax, Allahabad, [AIR 2004 Calcutta 63], Fauja Singh v Jaswant Singh,[PLR (1978) 80 P&H 456], Ghasirm V Kunjilal, [1989 SCC Online MP 5], and State of Uttarakhand v Mandir Sri Laxman Sidh Maharaj [(2007) 9 SCC 579] and

judgment of APTEL dated 10.5.2020 in Appeal No. 146 of 2009 in the case of Damodar Valley Corporation CERC.

Hearing dated 26.4.2022

13. The matters were heard 'on admission' through virtual hearing on 26.4.2022. During the course of hearing, learned counsel for the Review Petitioner, GUVNL reiterated the grounds made in the Review Petition. It was submitted that the said issue (i.e., whether compensation for Change in Law should be on lower of actual injection or scheduled generation) had not been raised by CGPL in the appeals before APTEL and was not the subject matter of appeals. Further, even in the remand proceedings, CGPL had asked for compensation on the basis of lower of actual injection or scheduled generation but computed in a monthly/ quarterly manner instead of every 15 minute time block. Since the said issue was never raised in the Appeal and was not claimed by CGPL in the remand proceedings, the Commission should not have allowed it. The Impugned Order has travelled beyond the scope of remand. Thus, there is an error apparent on the face of the Impugned Order. Learned counsel for the Review Petitioners in Review Petition No. 9/RP/2022 and Review Petition No. 10/RP/2022 adopted the submissions made by the learned counsel for the Review Petitioner, GUVNL in Review Petition No. 6/RP/2022. Learned counsel further referred to Memorandum of Appeal No. 172 of 2017 filed by CGPL before the APTEL and submitted that the issue of actual generation or schedule generation had not been raised by the CGPL in the said Appeals.

14. *Per contra*, learned counsel for the Respondent, CGPL opposed the admissibility of the Review Petitions and submitted that the Review Petitioners have failed to demonstrate any error apparent on the face of the Impugned Order as

contended. Learned counsel submitted that APTEL, in paragraph 101 to paragraph 109 of the judgment dated 27.4.2021, has clearly observed that the Change in Law relief has to be allowed on actual consumption of coal. The Impugned Order has been passed in accordance with the scope of remand and the Review Petitioners cannot be permitted to re-argue the matter. Learned counsel referred to paragraph 9.39 of the Memorandum of Appeal No. 172 of 2017 filed before APTEL and submitted that in the said appeal, CGPL had in fact argued that relief to CGPL be computed on the basis of actual consumption of coal. Learned counsel submitted that CGPL's actual injection after adjusting for RRAS-up and SCED is its scheduled generation and that CGPL is not supplying power to any third parties.

Analysis and Decision

15. We have considered the submissions made by learned counsels for the Review Petitioners, GUVNL, RUVNL and HPPC and learned counsel for the Respondent, CGPL. Accordingly, we proceed to consider whether any case for review has been made out by the Review Petitioners in terms of Order 47 Rule 1 of the CPC read with Regulation 103 of the Conduct of Business Regulations. Under 47 Rule 1 of the CPC, a person aggrieved by order of a Court can file for review on the following grounds, if no appeal against the said order has been filed:

- (a) Discovery of new and important matter of 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.
- (b) On account of some mistake or error apparent on the face of record; and
- (c) For any other sufficient reason.

In light of the above provisions, we proceed to consider the grounds raised in the Review Petitions for review of the Impugned Order dated 20.12.2021 in Petition

No. 157/MP/2015 along with IA No. 53 of 2021 and in Petition No. 121/MP/2017 along with IA No. 64 of 2021.

16. The Review Petitioners have contended that the Impugned Order deserves to be reviewed as it allows Change in Law on actual generation/injection after adjustment of RRAS and SECD without taking into consideration the scheduled generation. It has been stated that the issue of consideration of actual or scheduled generation, whichever is lower, was decided by the Commission in its earlier order dated 17.3.2017 in Petition No. 157/MP/2015 and order 21.8.2018 in Petition No. 121/MP/2017. Though CGPL had filed appeals against the said orders, the above aspect was not challenged by CGPL in the appeals before the APTEL. Scope of the appeals as evident from the judgment of APTEL was limited to the Change in Law compensation related to coal-based levies computed on quantum of coal calculated on the basis of normative parameters instead of actual coal consumed. Reliance was placed on the judgment of APTEL dated 27.4.2021. When the said issue had not been raised by CGPL in the appeals and was not the subject matter of appeals, the Commission could not have allowed it in remand. The Impugned Order has travelled beyond the scope of remand. The Review Petitioners have submitted that the Impugned Order is contrary to the pleadings of the parties and more particularly, the pleading of CGPL and grants a relief beyond what CGPL had sought. In the remand proceedings, CGPL itself had proceeded on the basis that compensation for Change in Law had to be on lower of actual injection or scheduled generation. The only aspect for consideration was whether it has to be on 15 minutes time block basis or monthly/annual basis. Reliance was placed on CGPL's rejoinder dated 21.9.2021 in IA No. 64 of 2021 and Written Note of Arguments dated 27.9.2021.

17. We have considered the submissions made by the Review Petitioners GUVNL, RUVNL and HPPC. In our view, the contention of the Review Petitioners that the Impugned Order which allows Change in Law on actual generation/ injection after adjustment of RRAS and SCED without taking into consideration the scheduled generation, has travelled beyond the scope of the remand proceedings is entirely misplaced. APTEL in its judgment dated 27.04.2021 has held as under:

“106. As ruled in UHBVNL & Anr. v. Adani Power Ltd. (supra), the PPA, by Article 13, envisages restitution of the affected party on actuals to the same economic position as if such CIL events had not occurred. The principle contemplated under Article 13.2 of the PPA is to grant relief to mitigate the actual loss suffered by the affected party. Neither the PPA nor the bid documents contemplate discretion to vest in the Commission to limit relief to normative parameters. There was no justification for the CERC to reduce the relief for CIL, especially when the differential amount (i.e. amount spent by CGPL vis-à-vis the amount calculated after computing the quantum of coal in terms of the normative parameters) had already been incurred by CGPL and had been duly audited. If the relief for CIL to be granted is computed on the basis of normative parameters (and not on actual impact), the appellant CGPL would stand penalised by lower relief, for no fault on its part.”

107. The approach of CERC linking the computation of quantum of coal to its Order dated 06.12.2016 is erroneous. The said Order dated 06.12.2016 was passed by it (CERC) in the Compensatory Tariff remand proceedings, wherein the scope of relief to be granted to the appellant (CGPL) was confined to Force Majeure (under Article 12). In contrast, the relief of restitution on the basis of actuals is permitted in case of CIL (under Article 13). The CERC could not have arbitrarily reduced the quantum of relief to be granted to the affected party being aware of the ruling in Energy Watchdog (supra).”

108. It is well conceded by the appellant that additional expenses incurred by a Seller due to a CIL event are allowed only after a prudence check. This (prudence check) does not automatically imply that the costs incurred by a Seller are not to be allowed as per actuals. If the costs incurred by the Seller have been prudently incurred, the same must be allowed on actuals. No facts showing imprudence in such additional expenditure have been found by CERC. In this view, the rejection of the claim of the appellant for compensation on actual consumption of coal is without any justification.”

109. In view of the settled law on the subject, it is held that CERC has fallen in grave error by declining to undertake the computation of coal for determining the CIL compensation based on actual coal consumed by CGPL. Such compensation cannot be restricted to normative bid parameters as held by”

CERC. The Commission must bring about suitable correction and is directed to do so accordingly.”

18. APTEL in the above paragraphs has clearly held that in the case of Change in Law, the relief of restitution is permitted on the basis of actuals and if the costs incurred by the seller have been prudently incurred, the same must be allowed on actuals. It has also been held that the rejection of the claim of CGPL for compensation on actual consumption of coal was without any justification and the Commission has fallen in error by declining to undertake the computation of coal for determining the compensation for Change in Law compensation based on actual coal consumed by CGPL. APTEL has held that the CGPL's entitlement for the Change in Law compensation is on the basis of actual coal consumed by it. There cannot be any dispute as to the actual coal consumption which can only correspond to the actual generation or actual injection and not the schedule generation. Therefore, the contention of the Review Petitioners that while allowing Change in Law on actual injection basis, the Commission has gone beyond the scope of the remand directions is not sustainable. On the contrary, the Commission has in fact passed the Impugned Order strictly as per the directions of the APTEL in the judgment dated 27.4.2021.

19. The Review Petitioners have further contended that at no point was it ever pleaded that the Change in Law impact should be computed based on actual injection ignoring scheduled generation. It was consistent stand of the parties that the impact should be considered based on lower of actual injection and scheduled generation. During the course of hearing, learned counsel appearing on behalf of CGPL referred to paragraph 9.39 of the Memorandum of Appeal No. 172 of 2017

filed before APTEL and submitted that in the said appeal, CGPL had in fact argued that relief to CGPL be computed on the basis of actual consumption of coal. Learned counsel submitted that CGPL's actual injection after adjusting for RRAS-up and SCED is its scheduled generation and that the Petitioner is not supplying power to any third parties. We have considered the submissions of the parties. In the Impugned Order, the Commission had already noted that the said issue was not raised by the Review Petitioners before the APTEL in the said appeals with regard to the Change in Law events and as raised by GUVNL during the remand proceedings was beyond the scope of the remand proceedings. However, keeping in view the findings of the APTEL in the said Judgment, the Commission in the Impugned Order went on to hold that Change in Law impact was required to be calculated based on coal consumed for actual injection only (after delinking from schedule generation), and accordingly, held that the Petitioner will be entitled to relief for Change in Law on coal-based levies on actual coal consumed for actual injection further adjusted (reduced) by the coal consumption corresponding to energy injected under RRAS-up and SCED. As noted above, since APTEL in the judgment dated 27.4.2021 had held CGPL's entitlement for Change in Law relief on the basis of actual coal consumption, the Commission by the Impugned Order has only implemented the said judgment. In our view, if the Review Petitioners are aggrieved on account of compensation for Change in Law being linked to actuals, including actual injection as allowed by the Commission in accordance with the judgment of APTEL, they cannot be permitted to seek any modification to such relief (i.e. limiting the consumption of coal to schedule generation), either in the remand proceedings or the present review proceedings. Therefore, the contention of the Review Petitioners on this count is rejected.

20. The Review Petitioners have vehemently argued that in the remand proceedings the Commission cannot modify its earlier orders on the aspects outside the scope of remand and has placed reliance on the number of Hon'ble Supreme Court Judgments to buttress the aforesaid submission. However, in our view, the said submission is misplaced inasmuch as we have already noted above the Judgment of the APTEL itself holds the CGPL's entitlement for Change in Law compensation on actual coal basis and by the Impugned Order the Commission has only implemented the direction of the APTEL as contained in the Judgment dated 27.04.2021. It is settled principle of law that the Court below to which the matter is remanded by the Superior Court is bound to act within the scope of remand and it is not open to the Court below to do anything but to carry out the terms of the remand in the letter and spirit. Moreover, in case of limited remand order, the jurisdiction of the Court below is limited to the issues remanded and it cannot sit on appeal over the remand order. In the present case, as noted above, the Judgment of the APTEL dated 27.4.2021 itself holds that the rejection of claim of CGPL for compensation on actual consumption of coal is without justification. In our view, the submissions of the Review Petitioners that the coal has to be considered in respect of the actual generation or scheduled generation, whichever is lower, would amount to imposing an extraneous condition to the Change in Law relief as has been allowed by the judgment of APTEL.

21. Further, the APTEL has directed the Commission to bring about suitable corrections to its orders. APTEL in its judgment dated 27.04.2021 has also held as under:

"174. The impugned orders of the Commission stand modified accordingly. In view of above noted observations and directions, subject-wise, the Central Electricity

Regulatory Commission is directed to pass the necessary consequential orders within four weeks of this judgment and ensure that the benefit, to the extent allowed, inures without delay to the appellant.”

22. Thus, scope of the remand proceedings was to implement the judgment of APTEL in letter and spirit, and to pass consequential orders. Accordingly, the Commission vide Impugned Order has implemented the said directions of APTEL and consequently has held that the CGPL shall be entitled to Change Law impact corresponding to the actual injection. Thus, by the Impugned Order, the Commission has only carried out the terms of the remand in its letter and spirit.

23. It is a well settled that a review petition has a limited purpose and cannot be allowed to be an appeal in disguise. An error which is not self-evident and has to be detected by process of reasoning can hardly be said to be error apparent on the face of record for the Court to exercise its power to review under Order 47 Rule 1 of CPC. In exercise of the jurisdiction under Order 47 Rule 1 of CPC, it is not permissible for erroneous decision to be reheard and corrected. It is also well settled that the power of review cannot be exercised to substitute a view. Relevant extracts of some of the judgments of the Hon`ble Supreme Court in this regard are as under:

(a) In **Lily Thomas & Ors. v. Union of India & Ors. [(2000) 6 SCC 224]**, the Hon'ble Supreme Court has held as under:

“56. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated as an appeal in disguise. The mere possibility of two views on the subject is not a ground for review....”

(b) In **Union of India v. Sandur Manganese and Iron Ores Limited & others [(2013) 8 SCC 337]**, the Hon'ble Supreme Court has held as under:

“23. It has been time and again held that the power of review jurisdiction can be exercised for the correction of a mistake and not to substitute a view. In Parsion Devi & Others Vs. Sumitri Devi & Others, this Court held as under:

“9. Under Order 47 Rule 1 of 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 of CPC, it is not permissible for an erroneous decision to be “reheard and corrected”. A review petition, it must be remembered has limited purpose and cannot be allowed to be “an appeal in disguise.”

24. In view of the foregoing observations, we are of the view that no grounds for review have been made out by the Review Petitioners, for reviewing the Impugned Order dated 20.12.2021 in Petition No. 157/MP/2015 along with IA No. 53 of 2021 and in Petition No. 121/MP/2017 along with IA No.64 of 2021 and therefore, the present Review Petitions deserves to be rejected.

25. Accordingly, the Review Petition No.6/RP/2022, Review Petition No. 9/RP/2022 and Review Petition No. 10/RP/2022 are disposed of on admission stage in terms of the above.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member

sd/-
(P.K. Pujari)
Chairperson