

**BEFORE THE JOINT ELECTRICITY REGULATORY COMMISSION
(FOR THE STATE OF GOA AND UNION TERRITORIES AT GURUGRAM)**

COROM:

**Alok Tandon, Chairperson
Jyoti Prasad, Member (Law)**

Review Petition No. 126/2024

DATE OF HEARING: 17.12.2024

DATE OF ORDER: 21.01.2025

IN THE MATTER OF:

Petition under Section 94 (1) (f) of the Electricity Act, 2003 seeking review of the Order dated 22.05.2024 passed in Petition No.120 of 2024.

AND IN THE MATTER OF:

Dadra and Nagar Haveli and Daman and
Diu Power Corporation Limited, Union
Territory of Dadra and Nagar Haveli and
Daman and Diu, Silvassa

...PETITIONER

VERSUS

Dadra and Nagar Haveli and Daman and
Diu Power Distribution Corporation
Limited

...RESPONDENT

PRESENT FOR THE PETITIONER

1. Sh. Anand Ganeshan, Advocate, DNHDDPCL
2. Sh. CA Parmar, Chief Engineer, DNHDDPCL
3. Sh. Hemant Kumar, CFO, DNHDDPCL
4. Sh. Saurabh Maheshwari, Deputy Manager, DNHDDPCL

PRESENT FOR THE RESPONDENT

1. Ms. Deepa Chawan, Counsel, DNHDDPDCL
2. Ms. Ruchi Patil, Advocate, DNHDDPDCL
3. Sh. Chetan Bundela, Executive Director, Torrent Power
4. Sh. Jignesh, DNHDDPDCL
5. Ms. Luna Pal, DNHDDPDCL

ORDER

A. BRIEF FACTS:

1. Petition No. 126 of 2024 was filed by the Review Petitioner, Dadra and Nagar Haveli and Daman & Diu Power Corporation Limited (“DNHDDPCL” / “Review Petitioner”), seeking review of order dated 22/05/2024 passed in Petition No. 120 of 2024 to establish Power Supply Centers (“PSCs”) within the territory of Dadra and Nagar Haveli and Daman and Diu (“DNH & DD”). The Petition No. 120 of 2024 was filed in compliance with the directions issued by this Commission in its Tariff Order dated 01.08.2023 in Petition No. 89 of 2022, wherein this Commission directed DNHDDPDCL to submit a fresh Petition for approval of the capital expenditure for PSCs, along with a detailed progress report on the proposed PSCs at six specified locations. The relevant portion of the order is reproduced below:

“Scheme 6: Power Supply Centre (PSC) and Call Centre

The Commission observes that the Petitioner was not able to provide detailed plans for the said investment such as timeline to execute the scheme and cost benefit analysis.

Therefore, the Commission at present is not approving any capital expenditure for scheme 6: Power Supply Centre (PSC) and Call Centre.

The Commission directs the Petitioner to submit a fresh Petition for approval of Capital Expenditure for Power Supply centre (PSC) including the detailed progress of proposed PSCs at 6 locations (Silvassa, Nani Daman, Moti Daman, Diu, Khanvel, Rakholi)."

2. After considering the submissions of all parties, this Commission, by its order dated 22.05.2024 ("**impugned order**"), disposed of the said Petition No. 120 of 2024, granting approval for the capital expenditure on the assets, subject to certain directions. The operative part of the order dated 22.05.2024 is reproduced below:

"In view of the aforementioned facts and circumstances the Commission hereby accords its approval for the capital expenditure inclusive of land cost of Rs 230.13 for creation of following assets:

1. Main Store, DNH – Rs 57.52 Cr.
2. Power Supply Center at Diu – Rs 45.02 Cr.
3. Power Supply Center + Head Office at Daman _ Rs 82.57 Cr.
4. Power Supply Center at DNH – Rs 45.02 Cr

The Commission also directs the Petitioner to submit quarterly progress report to the Commission and accordingly the capital expenditure shall be claimed by the Petitioner in a phased manner from FY 2024-25 to FY 27-28."

3. Aggrieved by the impugned order passed by this Commission, the Review Petitioner approached this Commission by way of the present Review Petition under Section 94 (1) of the Electricity Act, 2003 ("**Electricity Act**"), seeking review of the order dated 22.05.2024 passed by this Commission in the said Petition No. 120 of 2024.
4. The Review Petitioner seeks a review of the order on a limited issue, which, in its view, constitute errors apparent on the face of the record:
 - (i) Failure to record Review Petitioner submissions while passing the impugned order;
 - (ii) Failure to consider the property offered by the Review Petitioner to the Respondent at a nominal rent.

B. SUBMISSIONS BY THE REVIEW PETITIONER:

5. The issue for which the Review Petitioner seeks a review of the impugned order pertains to the Commission's failure to acknowledge and record the submissions made by the Review Petitioner while passing the impugned order. The relevant part of the impugned order is reproduced below:

"The Commission heard the Ld. Counsel for the Petitioner at length. The Respondent submitted that they had nothing to state in this matter."

6. The Review Petitioner submits that this Commission erroneously noted in the order that the Review Petitioner had no submissions to present in the matter. On the contrary, the Review Petitioner had presented its submissions regarding the capital expenditure claimed by the Respondent for setting up PSCs during the hearing held on 02.02.2024. These submissions were duly recorded in the daily order dated 02.02.2024.
7. As far as the issue of building place already being available is concerned, this Commission recorded as under:

"[...] At the same time Daman and Diu are fragmented and geographically located far apart therefore separate Power Supply Centre may be created at Diu and Daman. The Commission has observed that the petitioner has specified the cost of Power Supply Centre at various levels ranging from Rs. 45.02 Crore to Rs. 780.74 Crore at six locations. The Commission is of the view that two Power Supply Centres at Diu Daman one Power Supply Centre plus head office at Daman and Main Store at DNH are sufficient for establishment.

In view of the aforementioned facts and circumstances the Commission hereby accords its approval for the capital expenditure inclusive of land cost of Rs. 230.13 Crore for creation of the following asset:

1. Main Store, DNH – Rs. 57.52 Cr
2. Power Supply Centre at Diu- Rs. 45.02 Cr
3. Power Supply Centre + Head Office at Daman _ Rs. 82.57 Cr.
4. Power Supply Centre at DNH – Rs. 45.02Cr.

The Commission also directs the Petitioner to submit quarterly progress report to the Commission and accordingly the capital expenditure shall be claimed by the Petitioner in a phased manner from 2024-25 TO FY 27-28."

8. The Review Petitioner further submits that the Respondent has already been allotted office spaces/buildings/PSCs within DNH & DD at a nominal rent, which

adequately fulfills the requirements outlined by the Dadra and Nagar Haveli and Daman and Diu Power Distribution Corporation Limited ("**Respondent**" / "**DNHDDPDCL**") in Petition No. 120 of 2024 for housing various infrastructure needs. Additionally, for storage and other office purposes, any further space or buildings, if required, can be allocated on a lease basis for an initial period of three years, with the possibility of extension on mutually agreed terms. Utilizing the space already allotted by the Review Petitioner offers a sustainable and cost-efficient alternative, significantly reducing the financial burden on consumers compared to the capital expenditure sought by the Respondent.

C. SUBMISSIONS BY THE RESPONDENT:

9. *Per Contra*, the Respondent submits that the submissions made by the Review Petitioner on 31.01.2024 were duly recorded by this Commission in the interim order dated 02.02.2024. Additionally, during the hearing held on 31.01.2024, the Commission had directed the Review Petitioner to file an affidavit, detailing the information relating to the office space/building provided to the Review Petitioner. The Commission had also directed the Respondent to file an affidavit detailing office space/building allotted to the Review Petitioner and the requirement along with the justification for seeking additional office spaces/buildings/PSC. The said interim order dated 02.02.2024 reads as under:

"INTERIM ORDER

1. *The Commission heard the Petitioner and the Respondent at length.*
2. *Further, the Respondent submitted that the Petitioner have been allotted office space/ building/PSC at DNH & DD covering approx.. 48000 sft. Of area on rental basis for a period of five years @ of 6.45 lakh/month. The Respondent further stated that the contract period may be extended after five years with the revision in rent upon due approval of the administration.*
3. *The Commission directed the Petitioner to provide the details of the office space/building which have been allotted to the Petitioner and requirement with justification of the additional office space/building /PSC as projected in the present petition. Further the Commission directed the Respondent to furnish the details of office space/building as provided to the Petitioner.*
4. *In view of the above, both parties are directed to file their Affidavit before the Commission within two weeks from the date of this Order.*
5. *Subject to the aforesaid, Petition shall be listed in due course [...]."*

10. Accordingly, in compliance with the interim order dated 02.02.2024, the Respondent filed its detailed Affidavit dated 18.03.2024. However, the Review Petitioner did not file its Affidavit despite specific directions by this Commission.
11. On 18.04.2024, this Commission conducted a hearing in Petition No. 120 of 2024, during which the matter was heard, including submissions from the Respondent. It is submitted that during the hearing, the representative of the Review Petitioner, Mr. C.A. Parma, specifically stated that the Review Petitioner had nothing to submit regarding Petition No. 120 of 2024, which was filed by the Respondent seeking approval of CAPEX for PSC. Consequently, the Commission correctly recorded the statement of the Review Petitioner in the impugned order dated 22.05.2024.
12. Therefore, the contention of the Review Petitioner that the order dated 22.05.2024 does not record the submissions of the Review Petitioner is erroneous. *In arguendo*, even if this Commission had not purportedly recorded the submission made by the Review Petitioner in the proceeding, the same cannot be construed as a ground to invoke review jurisdiction.
13. The Respondent further submits that if at all there was any authenticity in the contentions of the Review Petitioner, due to the purported non-recording of its submissions in the impugned order dated 22.05.2024, the Review Petitioner would have immediately moved before this Commission. It is pertinent to note that the office of this Commission communicated the order dated 22.05.2024 to both the parties on the same day itself. The Review Petitioner, after a passage of three and a half months from the date of the impugned order dated 22.05.2024, filed the present Review Petition. This belated proceeding cannot undermine the sanctity of the original proceeding, by way of filing the present Review Petition.
14. The Review Petition ought to be dismissed as not maintainable. The Review Petitioner has failed to establish any valid ground for review or demonstrate an error apparent on the face of the record. It is well-settled that the error warranting the exercise of the review jurisdiction must be an error that renders the judicial decision manifestly incorrect. The alleged error or omission contended by the Review Petitioner do not meet this threshold and do not warrant the invocation of the review jurisdiction. It appears that the Review Petitioner, under the guise of the

present proceedings, is attempting to seek a rehearing of Petition No. 120 of 2024, which amounts to an afterthought and is impermissible in law.

15. Lastly, contending that the Review Petitioner cannot avail of this mode of legal redress, the Respondent challenged the very maintainability of the Review Petition, arguing that the same does not fall within the ambit and scope of Section 94 (1) (f) read with Regulation 74 (B) of the JERC (Conduct of Business) Regulations, 2009.

D. ANALYSIS OF THE COMMISSION:

16. Heard and records perused.
17. While examining the issues raised in the present Review Petition, it is imperative to consider the scope of the review jurisdiction. Section 94 of the Electricity Act confers upon this Commission the power to review its decision, directions, and orders. The relevant provision is reproduced below for reference:

“(1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under the 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. [...]
- b. [...]
- c. [...]
- d. [...]
- e. [...]
- f. reviewing its decisions, directions and orders;
- g. [...]

18. The authority to seek a review is provided under Section 114 of the Civil Procedure Code, 1908 (“CPC”), with its limitations and conditions outlined in Order 47, Rule 1 of the CPC. The text of Order 47, Rule 1 is reproduced below:

“1. Application for review of judgment— (1) Any person considering himself aggrieved—

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

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be

produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record 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 judgment to the Court which passed the decree or made the order. [...]"

19. The parameters outlined in Order 47, Rule 1 of the Civil Procedure Code are three-fold: (i) discovery of new and important evidence or matter which, despite due diligence, was not within the knowledge of or could not be produced by the person seeking review; (ii) a mistake or error apparent on the face of the record; and (iii) any other ground analogous to the first two. To fully understand the scope, applicability, and extent of these grounds, it is essential to delineate the principles as established by judicial precedents over time.

20. In this regard, reference may be made to the decision of the Hon'ble Supreme Court of India in *Lily Thomas vs. Union of India* [(2000) 6 SCC 224] wherein it was held:

"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 an appeal in disguise. [...]"

21. From the aforesaid decision of the Hon'ble Supreme Court, it follows that any application for review must be adjudicated with utmost caution and examined to determine whether it unequivocally fulfills one of the specified requirements to be maintainable under law.

22. Turning to the facts of the present case, the first ground for seeking review is the assertion that the Commission recorded the statement, *"The Respondent submitted that they had nothing to state in this matter"*, during the hearing held on 18.04.2024. It is not under dispute that the submissions made by the Review Petitioner during the hearing on 31.01.2024 were duly recorded in the Daily Order dated 02.02.2024. However, during the subsequent hearing on 18.04.2024, the representative of the Review Petitioner had no further submissions to make regarding Petition No. 120 of 2024, filed by the Respondent seeking approval of CAPEX for PSCs. Accordingly, this Commission accurately recorded the statement made by the representative of the Review Petitioner during the hearing on 18.04.2024 in its order dated

22.05.2024. We, therefore, find no error in the recording of the Review Petitioner's statement in the order dated 22.05.2024.

23. The second ground for filing the present Review Petition is that the order dated 22.05.2024 fails to record the submissions made by the Review Petitioner during the hearing on 31.01.2024 in the original proceeding, Petition No. 120 of 2024. However, it is observed that the submissions made by the Review Petitioner on 31.01.2024 were duly recorded in the Daily Order of the Commission dated 02.02.2024. Interim orders of the Commission are essentially part of the proceedings and are included in the records. Repeating the recording from the interim orders in the final orders, which has no impact on the decision, is unnecessary and cannot serve as a valid ground for review. In the Interim Order, the Commission had also directed the Review Petitioner to file an affidavit detailing the information regarding the office space/building provided to the Respondent. Similarly, the Commission directed the Respondent to file an affidavit detailing the office space/building allotted to them, along with the justification for seeking additional office spaces/buildings/PSCs. Both parties were instructed to file their respective submissions within two weeks from the date of the order. However, the Review Petitioner had not filed any affidavit till the time the order was passed on 22.05.2024 in Petition No. 120 of 2024. On this issue, this Commission, therefore, does not find any error apparent on the face of the record.

24. In support of its arguments, the Review Petitioner relied upon the decision of the Hon'ble Supreme Court in *BCCI vs. Netaji Cricket Club* [AIR 2005 SC 592], the relevant excerpts of which is reproduced hereunder:

"92. Yet again in Lily Thomas [(2000) 6 SCC 224 : 2000 SCC (Cri) 1056] this Court has laid down the law in the following terms: (SCC pp. 247-48, para 52)

"52. The dictionary meaning of the word 'review' is 'the act of looking, offer something again with a view to correction or improvement'. It cannot be denied that the review is the creation of a statute. This Court in Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji [(1971) 3 SCC 844: AIR 1970 SC 1273], held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review

petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice nothing would preclude the Court from rectifying the error.”(emphasis supplied)

93. It is also not correct to contend that the Court while exercising its review jurisdiction in any situation whatsoever cannot take into consideration a subsequent event. In a case of this nature when the Court accepts its own mistake in understanding the nature and purport of the undertaking given by the learned Senior Counsel appearing on behalf of the Board and its correlation with as to what transpired in the AGM of the Board held on 29-9-2004, the subsequent event may be taken into consideration by the Court for the purpose of rectifying its own mistake.”

25. However, the facts of the present petition are distinguishable from those considered in **Netaji Cricket Club** (supra). In the present case, the Commission had already recorded the statement of the Review Petitioner in its Daily Order dated 02.02.2024. Reiterating the same in the final order would merely amount to repetition. The Commission passed the final order after taking into consideration all relevant facts, submissions made before it, including the statement recorded on 02.02.2024. Therefore, the contention of the Review Petitioner that the Commission failed to record its statement is not tenable.
26. It is no longer *res integra* that a mere factual or legal error is insufficient to invoke the review jurisdiction. As observed by the Hon’ble Supreme Court in **Asharfi Devi vs. State of U.P.** [(2019) 5 SCC 86], to attract the provisions of Order 47, Rule 1 of the Code, the error or mistake must be apparent on the face of the record. As the term implies, an error apparent on the face of the record must be one that is immediately evident upon a simple perusal of the record and does not require a long-drawn reasoning process to establish its existence. An error discovered only after a detailed analysis or process of reasoning does not qualify as “an error apparent”.
27. It is only a “patent error” and not a “mere wrong decision” which qualifies as an error apparent on the face of the record. In **Hari Vishnu Kamath vs. Ahmad Ishaque** [AIR 1955 SC 233], the Hon’ble Supreme Court held that an error apparent must go beyond a mere mistake and be one that is evident and manifest on the face of the record. Similarly, in **Parison Devi vs. Sumitri Devi** [(1997) 8 SCC 715], the

Court observed that an error requiring detection through reasoning cannot be considered an error apparent on the face of the record. It was observed:

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

28. What becomes crystal as clear that the mistake or error for which a party seeks a review must be one that is self-evident. If a matter requires rehearing and correction, it would amount to an appeal under the guise of a review. Courts have consistently emphasized the fine line between an appeal and a review. Courts exercising review jurisdiction have repeatedly been cautioned not to reassess the judgment while hearing a review application. In this context, the courts have developed "multiple facets" to explain the scope and extent of what constitutes a "mistake or error apparent on the face of the record" as a valid ground for seeking a review.
29. This Commission has also noted that the Review Petition has been filed with a delay of 66 days, clearly exceeding the 45-day limitation prescribed under Regulation 74(B) of the Joint Electricity Regulatory Commission (Conduct of Business) Regulations, 2009. The Respondent in the present petition has raised an objection regarding the maintainability of the Review Petition, citing the delay in filing and the limitation period prescribed for filing a review. The Review Petitioner, through an affidavit dated 28.11.2024, filed an application seeking condonation of the delay in filing the Review Petition. The reasons stated in the affidavit are justifiable, and accordingly, the delay is condoned.
30. In the interim, the Review Petitioner has filed an additional affidavit on 03.01.2025, apprising the Commission the details of the office space/building which have been allotted to the Respondent and requirement with justification of the additional office space/building /PSC. We do not find any discovery of new matter or evidence in that affidavit with respect to the review sought by Review Petitioner at this belated stage. The additional information which is provided now

was well within the knowledge of the Review Petitioner. The Hon'ble Supreme Court of India in the case of "*The State of West Bengal and others v. Kamal Sengupta and others 2008 (8) SCC 612*", wherein the apex court had laid down the conditions required for seeking review of the judgment on the ground of "discovery of new matter or evidence". The relevant para of the judgment reads as under: -

".....14. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review ex debito justitiae. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court earlier..."

31. Therefore, since review is not a
32. rehearing we do not find any reason to consider the submission filed by the Review Petitioner on 03.01.2025.

E. SUMMARY OF THE FINDINGS:


33. The summary of the findings rendered by this Commission are as follows:
 - (i) The delay in filing Review Petition is condoned.
 - (ii) The Review Petition is dismissed as not maintainable.

Ordered accordingly.

Sd/-
(Jyoti Prasad)
Member (Law)

Sd/-
(Alok Tandon)
Chairperson

Certified Copy


(S.D. Sharma)
Secretary I/c, JERC