



Chhattisgarh State Electricity Regulatory Commission
Vidhyut Niyamak Bhawan
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Review Petition No. 53 of 2017(M)

In the Matter, under order IX Rule 13 of Code of Civil Procedure, 1908 read with section 94 of the Electricity Act, for setting aside the order dated 03.10.2016 passed in suo-motu petition No. 31 of 2016(M).

M/s Jai Balaji Industries Ltd.,
Borai Industrial Growth Centre,
Vill. & P.O. Rasmada, Durg

... Petitioner

Versus

Chief Electrical Inspector

... Respondent

PRESENT : Narayan Singh, Chairman
Arun Kumar Sharma, Member

APPEARANCE : Shri Ankit Pandey, Advocate for petitioner.
Shri S.K. Sinha for respondent.

ORDER ON ADMISSION

(Passed on 27.11.2017)

The petitioner M/s Jai Balaji Industries Ltd. has filed the application for setting aside the ex-parte order dated 03.10.2016 in suo-motu petition No. 31 of 2016(M) in the matter of generation and consumption of power plant in the State for the Financial Year 2014-15.

2. The petitioner M/s Jai Balaji Industries Ltd. is a company registered under the Companies Act. The company has a power plant at Borai Industrial Growth Centre, Village & Post Rasmada, Distt. Durg (C.G.).

- 3.** According to the petitioner, after receiving the Commission's notice dated 13.06.2016, the applicant submitted its reply through Shri B.K. Chaubey, Electrical Consultant of the applicant company. Shri Chaubey could not attend the hearing as he was not well on that day.
- 4.** The Commission passed ex-parte order on 03.10.2016 declaring that the power plant of the applicant has lost its captive status for the year 2014-15.
- 5.** The petitioner submits that grave injustice is likely to be caused to the applicant, if the ex-parte order is not set-aside and thereafter the suo-motu petition is not heard on merit.
- 6.** Therefore, the review petitioner prays to set aside the ex-parte order dated 03.10.2016 and to finally decide the suo-motu petition No. 31 of 2016 (M) after giving the applicant an opportunity of hearing.
- 7.** To set aside the delay, the applicant has filed an application for condonation of delay also.
- 8.** We heard the petitioner on condonation of delay application as well as admission of the petition.
- 9.** The Commission vide order dated 03.10.2016 decided the original petition no. 31 of 2016(M) on the basis of the report submitted by the respondent in this petition and also after considering the reply dated 30.06.2016 of the petitioner in this petition, which was filed before the Commission on 05.07.2016, according to which the petitioner had consumed 50.55% power from its power plant but could not consume more than 51%. The Commission concluded that the respondent in that petition i.e. the petitioner of this petition could not fulfill its captive status for the year 2014-15.

10. Now, this petition is filed by the petitioner for review of order dated 03.10.2016, stating it ex-parte order, under section 94(1)(f) of the Electricity Act, 2003. The section provides as follows-

"94. Power 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) #####

(b) #####

(c) #####

(d) #####

(e) #####

(f) reviewing its decisions, directions and orders".

11. The Code of Civil Procedure 1908, in order 47 Rule 1 provides that-

"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, desire to obtain a review of the decree passed or order made against him, may apply for a review of judgment of 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 judgment 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 Appellant Court the case on which he applies for the review.

Explanation- The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment".

- 12.** It is amply clear from the perusal of the above provisions that a review petition can only be entertained on the ground of a mistake apparent on the face of records or discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the petitioner or it could not be produced by him at the time of decision of the earlier petition. There is no material on records, which support the genuineness of filing of the review petition.
- 13.** Further, it appears from records that the petitioner of this petition was not proceeded ex-parte and at the time of order the reply filed by him in that petition No. 31 of 2016(M) was considered before passing order, though in his absence his oral argument could not be heard.
- 14.** As we observed no merit on the petition, condonation of delay cannot be beneficial to the petitioner. Hence, we also reject his application for condonation of delay.
- 15.** We conclude that the present review petition filed by the review petitioner could not fulfill the criteria mentioned in order 47 Rule 1 of the Code of Civil Procedure 1908 and accordingly, we dismiss the petition summarily at the stage of admission.

Sd/-
(ARUN KUMAR SHARMA)
MEMBER

Sd/-
(NARAYAN SINGH)
CHAIRMAN