

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No. 32/RP/2022

in

Petition 301/GT/2020

Coram:

**Shri I.S Jha, Member
Shri Arun Goyal, Member
Shri Pravas Kumar Singh, Member**

Date of Order: 12th October, 2023

In the matter of

Petition for the review of the Commission's order dated 13.5.2022 in Petition No. 301/GT/2020 in the matter of truing up of tariff of Gandhar GPS (657.39 MW), for the period 2014-19.

And

In the matter of

NTPC Limited
NTPC Bhawan,
Core-7, Scope Complex,
7, Institutional Area, Lodhi Road,
New Delhi - 110 003

...Review Petitioner

Vs

1. Madhya Pradesh Power Management Company Limited,
Shakti Bhawan, Vidyut Nagar, Jabalpur - 482 008
2. Maharashtra State Electricity Distribution Company Limited,
Prakashgad, Bandra (East), Mumbai - 400 051
3. Gujarat Urja Vikas Nigam Limited,
Vidyut Bhavan, Race Course, Vadodara - 390 007
4. Chhattisgarh State Power Distribution Company Limited,
P.O. Sundar Nagar, Danganiya, Raipur – 492 013
5. Electricity Department of Goa,
Vidyut Bhawan, Panaji, Goa



6. DNH Power Distribution Corporation Limited,
UT of DNH, Silvassa – 396 230

7. Electricity Department,
Administration of Daman & Diu,
Daman - 396 210

...Respondents

Parties present:

Shri Anand Sagar Pandey, NTPC
Shri Parimal Piyush, NTPC
Shri Varun K. Chopra, Advocate, MPPMCL
Shri Mehul Sharma, Advocate, MPPMCL

ORDER

Petition No.301/GT/2020 was filed by the Review Petitioner, NTPC Limited for truing-up of tariff of Gandhar GPS (657.39 MW) (in short 'the generating station') for the period 2014-19 in terms of the 2014 Tariff Regulations and the Commission vide its order dated 13.5.2022 (in short 'the impugned order') had revised the tariff of the generating station for the said period. Aggrieved by the impugned order dated 13.5.2022, the Review Petitioner has filed this Review Petition seeking review on the ground that there are errors apparent on the face of record, on the following issues:

- (A) *Disallowance of additional capitalization for Reverse Osmosis plant;*
- (B) *Disallowance of additional capitalization for X-ray baggage inspection system;*
- (C) *Disallowance of additional capitalization for CCTV server upgradation;*
- (D) *Disallowance of additional capitalization for Rainwater Harvesting work in admin building considering the aspects mentioned herein above;*
- (E) *Calculations for interest on loan allowed as part of the annual fixed charges.*

Hearing dated 24.1.2023

2. The Review Petition was heard on 24.1.2023 on 'admission' and the Commission, based on the submissions of the parties, permitted the



Respondent MPPMCL to file its reply on 'maintainability as well on merits' in respect of the issues (a) to (d) raised by the Review Petitioner in paragraph 1 above vide interim order dated 13.2.2023 and notice was served on the Respondents. However, the issue in paragraph 1(e) above, was withdrawn by the Review Petitioner, during the hearing on 24.1.2023. The Respondent, MPPMCL has filed its reply vide affidavit dated 17.1.2023 and the Review Petitioner has filed its rejoinder to the same, vide affidavit dated 22.3.2023.

Hearing dated 27.4.2023

3. The Review Petition was heard on 27.4.2023 and the Commission, after hearing the representative of the Review Petitioner and the learned counsel for the Respondent MPPMCL, reserved its order in the matter.

4. Based on the submissions of the parties and the documents available on record, we proceed to examine the issues (A) to (D) above, as raised by the Review Petitioner in the subsequent paragraphs.

(A) Disallowance of additional capitalization for Reverse Osmosis (RO) plant;

5. The Commission, in paragraph 42 of the impugned order dated 13.5.2022 had disallowed the additional capital expenditure towards Reverse Osmosis plant as under:

"42. The matter has been considered. The Petitioner has claimed additional capital expenditure for Reverse Osmosis (RO) Plant under Regulation 14(3)(ii) of the 2014 Tariff Regulations based on the guidelines on techno-economic feasibility of implementation of ZLD dated 19.1.2015, issued by CPCB. We notice that the Petitioner has not submitted any notification/circular/orders of the competent authority to justify the claim based on change in law. In view of this, the actual additional capital expenditure claimed is not allowed. Further, the corresponding undischarged liabilities of Rs.142.89 lakh for Reverse Osmosis (RO) Plant are also not allowed."



Submissions of the Review Petitioner

6. The Review Petitioner has submitted that it had claimed an amount of Rs 1644.41 lakh in 2018-19 as additional capitalization for RO Plant, under Regulation 14(3)(ii) of Tariff Regulations 2014, with justification provided in the Petition (in Form-9A for 2018-19). It has further submitted the following:

(a) The Commission had disallowed the additional capitalization for RO Plant stating that any notification/circular/orders of the competent authority to justify the claim based on change in law has not been provided by the Petitioner. As per the Consent to Operate (CTO) for the Gandhar GPS granted by the Gujarat Pollution Control Board (GPCB), valid for the period from 26.06.2014 to 23.02.2019, the Review Petitioner was required to install the RO Plant to comply with various provision for Trade Effluent as stated in the CTO.

(b) Substantial quantum of effluent (approx. 200 cum/hr) from CW system had to be disposed by way of blow down to maintain CW chemistry, however, after installation of RO plant, the recycled CW blow down is being used as raw water leading to notable reduction in raw water consumption. During the years 2019-20, 2020-21 and 2021-22, savings in raw water consumption of approx. 36,482 cum, 2,40,727 cum and 72,730 cum respectively was achieved through recycling by RO plant, which otherwise, would have to sourced additionally leading to additional burden on the beneficiaries for water charges.

(c) As per applicable rate of water charges for Gandhar GPS, this translates to a saving of about Rs 10.41 lakh, Rs 75.56 lakh and Rs 25.11 lakh in 2019-20, 2020-21 and 2021-22 respectively, which is being fully passed on to the beneficiaries in form of reduced water charges. Since the beneficiaries are reaping the benefits of reduced water charges due to installation of RO Plant, the capital cost for installation of the same also needs to be serviced by the beneficiaries.

(d) The Commission in its order dated 26.12.2017 in Petition No 152/ GT/ 2015 (petition for truing-up of tariff for the period 2011-14 and determination of tariff for the period 2014-19 in respect of Maithon Power Limited) had allowed the additional capitalization of RO Plant installed for treatment of CW blow down to make water reusable and to reduce the make-up water consumption.

(e) In the present case, the Review Petitioner was also required to implement schemes to arrest discharge of effluents in compliance to provisions in Consent to Operate (CTO) granted by Gujarat Pollution Control Board (GPCB) and in accordance with CPCB Guidelines on Techno-Economic Feasibility of Implementation of Zero Liquid Discharge (ZLD) of January 2015, the Review Petitioner installed RO Plant in the generating Station to reduce the discharge of



effluents.

(f) With regard to the RO Plant installed, it is also pertinent to highlight the 'Policy for Reuse of Treated Waste Water' of Government of Gujarat which came into effect in May 2018. As per the said policy, Gujarat has a high portion of water stressed area and due to very high stress on existing water resources it is imperative for various sectors in the State to explore option of reusing treated waste water. Further, the Policy also envisages to minimize the disposal of untreated or partially treated waste water into lakes or rivers. Moreover, the policy also directs mandatory use of treated waste water for Thermal Power Plants within a distance of 50 km from the STP or city limits.

(g) The RO Plant installed by the Review Petitioner, which treats CW blowdown effluent for reuse as raw water and thereby reduces raw water consumption and quantum of waste water disposal in river, is in line with the said Policy of Government of Gujarat to reduce the burden on limited fresh water sources available in the State.

(h) In light of the above submissions and supporting documents placed, it is submitted that the Petitioner installed RO Plant to comply with the provisions related to discharge of effluents in the Consent to Operate (CTO) granted by Gujarat Pollution Control Board (GPCB) for the station. Further, the RO plant was installed in accordance with the CPCB Guidelines on Techno-Economic Feasibility of Implementation of Zero Liquid Discharge (ZLD) of January 2015. Also, the said RO Plant installation has enabled reuse of treated waste water in compliance of the 'Policy for Reuse of Treated Waste Water' of the Government of Gujarat which came into effect in May 2018. Further, the benefit of reduced water consumption of the instant Station due to use of CW blow down treated by the RO plant is fully passed on the beneficiaries in form of reduced water charges. Hence, the Review Petitioner prays that the Commission may review the disallowance of additional capitalization for RO Plant.

Reply of the Respondent, MPPMCL

7. The Respondent MPPMCL has submitted that the Review Petitioner in review petition has submitted the consent to operate valid for the period from 26.6.2014 to 23.2.2019 and the Policy for Reuse of Treated Waste Water' of Government of Gujarat which came into effect in May 2018, without giving any specific reason for not producing the same before this Commission at the time of order. It has also stated that the above-mentioned documents were issued



way before the Impugned order was pronounced and hence, the Commission had rightly disallowed the actual additional capitalization expenditure claimed by the Petitioner due to the non-submission of requisite documents.

Rejoinder of the Review Petitioner

8. The Review Petitioner in its rejoinder, has submitted that it has placed additional documents in the Review Petition in terms of liberty allowed vide Order 47 Rule 1 of CPC 1908. It has also submitted that no such additional documents were sought by the Commission either through Record of Proceedings of hearing or through Technical Validation letters, which are generally issued by the Commission in relevant cases. The Review Petitioner has stated that to the best of its understanding, it had submitted the relevant documents that substantiate the additional capitalization claims. It has added that some Plant Security related documents were not submitted earlier by the Petitioner, since the same were of 'secret' nature. The Review Petitioner has further stated that the additional information placed now may alter the decision of the Commission with respect to the additional capitalization claims disallowed and hence may be considered a 'sufficient reason' for the Commission. It has been reiterated that the said additional documents are important to pass through the eyes of the Commission to impart justice to the Petitioner in the present case.

(B) & (C). Disallowance of additional capitalization for X-ray baggage inspection system and CCTV server upgradation

9. The Commission in paras 25 and 45 of the impugned order dated 13.5.2022



had disallowed the additional capital expenditure towards X-ray baggage inspection system and CCTV server upgradation, as under:

*“25. The matter has been considered. It is observed that the Petitioner has claimed **the X-Ray baggage inspection system** under Regulation 14(3)(iii) of the 2014 Tariff Regulations considering the threat to the installations of power generation as per intelligence agencies. It is however noticed that the Petitioner, in support of the claim has not furnished any documentary evidence demonstrating that the claim is based on direction or advice of appropriate Governmental agencies or statutory authorities responsible for national security/internal security in terms of Regulation 14(3)(iii) of the 2014 Tariff Regulations. In the absence of this, we are not inclined to allow the additional capital expenditure claimed by the Petitioner along with undischarged liabilities of Rs.0.26 lakh for the same.*

xxx

*45. The matter has been considered. It is observed that the Petitioner has claimed the **CCTV server upgradation** under Regulation 14(3)(ii) read with Regulation 14(3)(vii) of the 2014 Tariff Regulations, considering the cyber threat and for e-security, for successful and efficient operation of the station and to ensure the continuous monitoring of security in view of cyber threat to the ministries, defence institutions and industries, MHA, GOI has been revisiting its policy from time to time. The Petitioner has however not furnished any documentary evidence in support of its claim that the up-gradation is necessary due to change in policy of the MHA GOI. In view of this, the actual additional capital expenditure of Rs.4.43 lakh in 2018-19 on cash basis, for CCTV server upgradation, is not allowed. Further, the corresponding undischarged liabilities of Rs.0.41 lakh for CCTV server upgradation is also not allowed.”*

Submissions of the Review Petitioner

10. The Review Petitioner has submitted that in support of the additional capitalization claim for X-ray Baggage Inspection system for Rs 12.89 lakh in 2014-15 and CCTV Server upgradation for Rs 4.43 lakh in 2018-19, the following justifications was furnished in Form-9A (2014-15):

“Considering the location of the instant station in the state of Gujarat, and threat to the installations of power generation as per intelligence agencies from time to time, X-ray machine have been installed at the entry of the plant to enhance the security. Hon'ble Commission may please consider the same and allow for tariff.”

and

“CCTV has been installed in the instant station for the safety and security measures. In view of the cyber threat and for e-security, the upgradation of server has become evident for the CCTV system for successful and efficient operation of the station ensuring the continuous monitoring for its security. Hon'ble Commission may be pleased to allow the same.”

11. The Review Petitioner has further submitted the following:

(a) The X-ray baggage inspection system and CCTV server upgradation works were taken up by the Petitioner to comply with the directions in “Inspection



Report on the Security arrangements at Jhanor-Gandhar Gas Power Project, National Thermal Power Corporation (NTPC) (MO, GOI), Jhanor District Bharuch, Gujarat” dated 9-10 May, 2011 issued by a committee comprising Central and State Intelligence agencies. As per the same, the Review Petitioner was directed to install adequate number of technical gadgets including X-ray scanners and enable CCTV surveillance across the Plant premises.

(b) Also, CEA vide its letter dated 22.01.2014 issued directions to Central /State Power Generators for implementation of the security guidelines for infrastructure protection in Thermal Power Sector. As per the said letter, MOP, GOI had constituted a Committee for development of “National Infrastructure Protection Plan in Thermal Power Sector” under Member (Thermal) CEA with members from CISF, Intelligence Bureau (IB), NIC and power utilities. As per the said letter, Ministry of Home Affairs and Ministry of Power had directed implementation of the said guidelines in upcoming projects as well as upgradation of security arrangements in existing stations.

(c) The said guidelines direct for installation of equipment like X-ray scanners and to have robust and upgraded CCTV surveillance/ IT system. Further, as per the said letter, Jhanor-Gandhar GPS was categorized in hyper sensitive category, which further necessitated the Petitioner to keep the security systems upgraded and full-proof. In line with the above directions the Review Petitioner took up the works for installation of X-ray Baggage inspection system and CCTV server upgradation.

(d) The Petitioner had not provided the above documents along with the Petition as the same were of ‘secret’ nature. Since the Commission has disallowed the said claim on the account that relevant documents have not been provided, the Review Petitioner is submitting the masked version of the above documents (i.e. Inspection Report dated 09-10 May, 2011 and CEA Letter dated 22.01.2014).

(e) In view of the above documents being submitted, the Commission may review the disallowance of additional capitalization claims of Petitioner for X-ray baggage inspection system and CCTV server upgradation.

Reply of the Respondent, MPPMCL

12. The Respondent MPPMCL has submitted that the Review Petitioner has submitted the NTPC inspection report dated 9.5.2011 and 10.5.2011 issued by a Committee comprising the Central and State Intelligence agencies and CEA directions to Central /State power generators dated 22.1.2014 in masked version, without giving any proper reason for not producing the same before the Commission earlier. It has further



submitted that the veracity of the document and full context of the claim made by the Review Petitioner can't be verified from the masked version of the documents. The Respondent has also stated that the above-mentioned documents were issued way before the Impugned order was pronounced by the Commission and by claiming that the documents are secret in nature, the Review Petitioner cannot waive of its responsibility to produce the same. It has, therefore, submitted that the Commission has rightly disallowed the actual additional capitalisation expenditure claimed by the Petitioner due to the non-submission of the requisite documents.

Rejoinder of the Review Petitioner

13. In addition to the submissions in para 8 above, the Review Petitioner has submitted that it would submit a true copy of the documents, if directed by the Commission, and has accordingly prayed that the Commission may take cognizance of the additional documents in the interest of justice and allow the additional capitalization and associated liabilities for Rs 12.89 lakh in 2014-15 for X-ray Baggage Inspection System for Rs 4.43 lakh in 2018-19 for CCTV server upgradation.

Analysis and Decision

14. The submissions have been considered. It is observed that the claim of the Review Petitioner for additional capitalization of RO plant in 2018-19 was rejected by the Commission vide the impugned order dated 13.5.2022, on the ground that the Review Petitioner has not submitted any notification/circular/orders of the competent authority to justify the claim based on 'change in law'. Similarly, the claim for additional capitalization towards X-ray Baggage Inspection System and CCTV server upgradation respectively, were rejected on the



ground of absence of any documentary evidence with regard to the change in the MHA Policy. The Review Petitioner, has, in the Review Petition, furnished the consent to operate valid for the period from 26.6.2014 to 23.2.2019 and Policy for Reuse of Treated Waste Water' of Government of Gujarat (which came into effect in May, 2018) and has made detailed submissions, in support of its claim. Similarly, the Review Petitioner has submitted NTPC inspection report dated 9.5.2011 and 10.5.2011 issued by a Committee comprising the Central and the State Intelligence agencies and CEA directions to Central /State Power generators dated 22.1.2014 in masked version for consideration, on the ground that the same is secret in nature.

15. The Review Petitioner, in respect of the aforesaid issues on additional capitalization, has submitted that the additional information has been furnished in terms of the liberty allowed vide Order 47 Rule 1 of CPC. Order 47 Rule 1 of CPC provides as under:

“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.

(2) xxx

16. From the above provisions, it emerges that review of an order passed by the Commission can be sought on any one of the following grounds:



(a) Discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the party seeking review or could not be produced by him when the at the time when the decree was passed or order made;

(b) Mistake or error apparent on the face of record;

(c) For any other sufficient reason

17. It is not the case of the Review Petitioner that the additional documents produced now were not within its knowledge or could not be produced by it at the time when the impugned order was passed, despite due diligence. On the contrary, the Review Petitioners case is that these additional documents were not produced, since the Commission, during the pendency of the petition, had not sought the same through Record of Proceedings (ROP) or Technical Validation and some of the plant related documents were of a secret nature. This contention of the Review Petitioner is not acceptable for the simple reason that the claims under 'change in law' and 'change in Policy' [Regulation 14(3)(ii) and Regulation 14(3)(iii)] are required to be duly supported by documentary evidence, for the purpose of prudence check of the said claims. Also, in case these documents were of a secret nature, the same should have been brought to the notice of this Commission, which in this case, was not done. Nothing prevented the Review Petitioner from furnishing these lengthy additional submissions/documents, during the original proceedings. Since these additional documents were admittedly available with the Review Petitioner, but were not produced by the Review Petitioner at the time of passing the impugned order (on the ground that they were never sought for by Commission), we find no reason to review of the impugned order. The Review Petitioner, cannot, in review,



be permitted to reopen the issues on merits, by making additional submissions.

18. In *Parsion Devi and ors Vs Sumitri Devi and ors* [(1997) 8 SCC 715], the Hon'ble Supreme Court has explained the scope of review on the ground of "error apparent on the face of record" as under:

"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'.

19. In *S. Murali Sundaram V Jothibai Kannan and Others* [2023 SCC On Line SC 185], Hon'ble Supreme Court has dealt with the scope of review under Order 47 Rule 1 of CPC as under:

"15...After considering catena of decisions on exercise of review powers and principles relating to exercise of review jurisdiction under Order 47 Rule 1 CPC this Court had summed upon as under:

(i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

(ii) Power of review may be exercised when some mistake or error apparent on the fact of record is found. But error on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

(iii) Power of review may not be exercised on the ground that the decision was erroneous on merits.

(iv) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate.

(v) An application for review may be necessitated by way of invoking the doctrine actus curiae neminem gravabit."

20. In line with the above decisions and keeping in view that the impugned order dated 13.5.2022 was passed in terms of the documents available on record, on merits, we find no sufficient reason to consider the additional documents / lengthy reasoning furnished by the Review Petitioner, on the said



issues, to review the impugned order. Accordingly, the prayer of the Review Petitioner to review the impugned order on this ground is not maintainable and is accordingly rejected.

D. Disallowance of additional capitalization for Rainwater Harvesting work in admin building considering the aspects mentioned;

21. The Commission in paragraph 39 of the impugned order dated 13.5.2022 had disallowed the additional capital expenditure towards for Rainwater Harvesting work in admin building as under:

“39. The matter has been considered. It is observed that the Petitioner has claimed the Rainwater harvesting work in administrative building under Regulation 14(3)(ii) of the 2014 Tariff Regulations considering the Rainwater (Harvesting and Storage) Bill, 2016. It is not clear from the submissions of the Petitioner as to whether the said bill has been enacted as a law, mandating the expenditure claimed by the Petitioner. In the absence of this, the claim of the Petitioner cannot be construed under change in law to permit the additional capitalization claimed. In view of this, the claim of the Petitioner is not allowed.”

Submissions of the Review Petitioner

22. The Review Petitioner has submitted that in respect of the additional capitalization claim for Rain water harvesting work in admin building for Rs 7.50 lakh in 2018-19, the it had provided following justification, in Form-9A (2018-19):

“The Rain Water (Harvesting and Storage) Bill, 2016 envisages compulsory harvesting of rainwater in every Government, residential, commercial and institutional building to conserve water and ensure recharge of groundwater. In view of the above, the Commission may be pleased to admit the claim under clause 14(3)(ii) read with "Power to Relax".”

23. The Review Petitioner has also submitted the following:

(a) It had envisaged to execute the Rain water harvesting works not only in consequence to the Rain Water (Harvesting and Storage) Bill, 2016, but also in accordance with several other statutory policies, bye-laws and Regulations of Central/State Govt. that mandated implementation of Rain water harvesting measures.

(b) The National Water Policy 2012 released by the Ministry of Water Resources, Govt of India inter alia envisages rainwater harvesting by industrial areas to increase availability of utilizable water and also advocates water harvesting as a potent tool for adaptation to climate change.



(c) Gujarat Comprehensive Development Control Regulations -2017 provide that rainwater harvesting is mandatory for all buildings with ground coverage 80 sq.mt and above, as is the case with the admin. building of the generating station.

(d) Model Building Bye-Laws, 2016 issued by Town and Country Planning Organization, Ministry of Urban Development, Govt. of India, advocate Rain Water Harvesting as an important measure to be adopted for buildings to enable storage of water and as means to recharge ground water.

(e) The Commission has taken cognizance of advocacy of Rain Water Harvesting measures by several statutory policies/ regulations of Central/State Govts and has accordingly consistently allowed capitalization under Rain Water Harvesting in plethora of its orders such as Order dated 11.1.2010 in Petition No 141/2009 with I.A. 48/2009, Order dated 21.6.2016 in Petition No 285/GT/2014, Order dated 22.7.2016 in Petition No 250/GT/2014, Order dated 21.3.2017 in Petition No 263/GT/2014, Order dated 23.5.2012 in Petition No 332/2009, etc.

(f) In view of the above submission, the Petitioner has prayed that the Commission to review the disallowance of additional capitalization for Rain Water harvesting for admin building.

Reply of the Respondent, MPPMCL

24. The Respondent MPPMCL has submitted that the additional documents submitted by the Review Petitioner in review petition were issued way before the Impugned order was pronounced by the Commission and the Petitioner cannot waive of its responsibility to produce the same without specific reason. It has therefore submitted that the Commission has rightly disallowed the actual additional capitalisation expenditure claimed by the Petitioner due to the non-submission of the requisite documents.

Rejoinder of the Review Petitioner

25. In addition to the submissions in para 8 above, the Review Petitioner has submitted that the additional capitalization claim for Rainwater Harvesting work was for compliance of existing law and meets the requirement of Regulation 14 (3)(ii) of the 2014 Tariff Regulations. It has also submitted that contrary to the submissions of the



Respondent MPPMCL, the reliance of the Review Petitioner upon several orders of the Commission in which capitalization for Rain water harvesting was allowed taking cognizance of the several statutory policies/ regulations of Central/State Govts is well justified and is very much applicable to the present case. The Review Petitioner has stated that the additional documents are important to impart justice to the Review Petitioner in the matter.

Analysis and Decision

26. The matter has been examined. It is observed that the claim of the Review Petitioner for the said asset/work, was disallowed in the impugned order dated 13.5.2022, since it could not be ascertained from the submissions of the Review Petitioner, as to whether the bill (based on which the claim was made) was enacted as a law, mandating the expenditure, under change in law. The reliance placed by the Review Petitioner on certain orders of this Commission to justify the claim is misconceived and is not applicable to the present case, as the claims in these cases, were not based on any change in law event (as in the present case), but were works within the original scope/ works already approved in 2009-14 and later deferred. Also, no claim on this count appear to have been made in 285/GT/2014 or allowed in 332/2009. In our view, the Review Petitioner cannot now rely on the Model Building Bye-laws 2016, the National Water Policy 2012, the Gujarat Comprehensive Development Control Regulations -2017, to seek review of the impugned order, since no re-examination and re-appreciation of facts is permissible in a review proceeding. Further, nothing prevented the Review Petitioner from furnishing such lengthy reasoning during the course of the proceedings in the original petition. In the case of Lily Thomas



& others Vs. Union of India & Others {(2000) 6 SCC 224}, 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....”

27. In our view, the Review Petitioner cannot be allowed to re-agitate the issues on merits, in the review proceedings. We, therefore, find no error apparent on the face of the record and the review of the impugned order on this count fails.

28. Issues (A), (B) (C) and (D) are decided accordingly.

29. Review Petition No. 32/RP/2022 (in Petition No. 301/GT/2020) is disposed of in terms of the above.

Sd/-
(Pravas Kumar Singh)
Member

Sd/-
(Arun Goyal)
Member

Sd/-
(I. S. Jha)
Member

