

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 55 of 2010**

**In the matter of**

**Review of Order dated 06.05.2008 passed in Case No. 93 of 2007 and for appropriate directions to the Respondent under Section 10(2) of the Electricity Act, 2003 and the Terms of EPA dated 25.10.2004.**

**Shri. V.P. Raja, Chairman**  
**Shri. Vijay. L. Sonavane, Member**

M/s Yash Agro Energy Ltd. .... Petitioner

v/s

Maharashtra State Electricity Distribution Co. Ltd ..... Respondent

**ORDER**

**Dated: 8<sup>th</sup> April, 2011**

M/s Yash Agro Ltd., submitted a Petition under Regulation 85 of MERC (Conduct of Business) Regulation, 2004 r/w Section 94 of EA, 2003, on affidavit before the Commission on 08.09.2010, seeking review of Commission's order dated 06.05.2008 passed in Case No. 93 of 2007 and for appropriate directions upon the Respondent under Section 10(2) of the Electricity Act, 2003 and the Terms of EPA dated 25.10.2004.



1. The Petitioner has prayed as under:

“

- a) *Review the findings recorded in order dated 06.05.2008 in case No. 93 of 2007 to the limited extent of right of generating company to supply electricity through a dedicated transmission line at the load center of its consumers, and,*
- b) *To hold and declare that the Petitioner is entitled to supply power to M/s Umred Agro Complex Limited by a dedicated transmission line from its 8MW Biomass Co-generation Power Plant at Village Kolari, Tah. Chimur, Dist. Chandrapur without being required to obtain a license in view of provisions of Section 10(2) of the Electricity Act, 2003.*
- c) *Direct the Respondent to allow the Petitioner to supply power to its co-generation Associate M/s. Umred Agro complex Limited by a dedicated transmission line from its 8 MW Biomass Cogeneration Power Plant at village Kolar, Tah Chimur, Dist. Chandrapur without being required to obtain a licence in that behalf and to approve the single line Diagram (Dedicated line supply scheme) submitted by the Petitioner vide letter dated 07.05.2007.*
- d) *Direct the Respondent to immediately refund an amount of Rs.34,45,000/- paid by the Petitioner as interest free advance and the Respondent be directed to pay interest at 18% p.a. on the said amount with effect from 02.04.2009 till the date of refund.*
- e) *In view of the urgency involved in the case, and issues having been already decided, the present Petition may kindly be heard and decided by granting expeditious hearing.*
- f) *Grant any other relief which this Hon'ble Commission deems fit in the facts and circumstances of the case.”*

2. The Petitioner along with the Petition has filed an application for condonation of delay. The prayers for condonation of delay are as follows:

“

- a) *Condone the delay in filling application/Petition seeking review of findings recorded by this Hon'ble Commission in Case No. 93 of 2007 vide order dated 06.05.2008 and decide the Petition on merit.*
- b) *Grant any other relief which this Hon'ble Commission deems fit in the facts and circumstances of the case.”*

3. The Petitioner has submitted as under:

- i. The Petitioner has filed the review Petition for challenging the arbitrary and illegal action of the Respondent in not granting permission to the Petitioner for supply of power to its Co-gen Associate M/s Umred Agro Complex Ltd. (UACL) from 8 MW power plant of the Petitioner through a dedicated transmission line as well as illegal



action of not refunding 50% refundable advance paid by the Petitioner for evacuation arrangements.

- ii. The Respondent was in fact duty bound to take into account the legal position as explained by the Hon'ble Appellate Tribunal as well as this Hon'ble Commission and ought to have granted the permission for dedicated transmission line. However, till date, the Respondent appears to be in no mood to see reasons compelling the Petitioner to file present proceedings. Similarly it was obligatory for the Respondent to refund 50% refundable advance paid by the Petitioner (Rs.34,45,000/-) within 60 days from the date of order dated 06.05.2008 passed by this Hon'ble Commission in case No.93 of 2007 and in any case immediately after the order dated 24.03.2009 passed by the Hon'ble Appellate Tribunal in Appeal No.95 of 2008 when the Respondent had terminated the E.P.A. on 02.04.2009. The prayer for review of order dated 06.05.2008 in Case No.93 of 2007 is necessary in view of interpretation of Sections 10(1) and 19 (2) of the Act laid down by the Hon'ble Appellate Tribunal and this Hon'ble Commission.

4. The background and facts of the Petition are as follows:

- a. The Petitioner is a company incorporated under the Companies Act,1956. The Petitioner has established 8.0 MW biomass based cogeneration power plant at village Kolari, Tahsil chimur, Dist. Chandrapur in the State of Maharashtra. The valid permission for establishing the said Co-generation unit was granted by MEDA and thereafter all other statutory approvals were also obtained. The energy generation plant is established on land bearing Survey No.161, Mouza – Kolari, Tahsil Chimur, Dist. Chandrapur, area 10.5 acres.
- b. The EPA dated 25.10.2004 was executed by the Petitioner with the Respondent. Due to clause no. 7.4 of the EPA the dispute had arisen between the Petitioner and Respondent for Petitioner's right to opt for third party sale of electricity from the beginning itself.
- c. The Petitioner had entered into an agreement on 24.10.2006 with M/s Umred Agro Complex Ltd. (UACL) being a Co-generation Associate of the Petitioner. On 07.05.2007 the Petitioner applied to the Respondent to grant permission for supply of power to (UACL) through a dedicated transmission line. The Respondent vide its



letter dated 10.05.2007 had refused to grant permission to the Petitioner for supply of power to (UACL) as both Petitioner and (UACL) were not satisfying the qualifying criteria laid down by Commission to claim the status of captive generation plant. Therefore the dispute had arisen between the Petitioner and Respondent. To resolve the dispute a Case was filed before the Commission vide Case No. 93 of 2007. The prayer of the Petitioner in Case No. 93 of 2007 was as under:

- i) *“allow the Petitioner to make third party sale of electricity from the date of commissioning of the generation, and*
- ii) *direct Respondent Nos.1 to 3 to provide non-discriminatory open access to its distribution and transmission system for facilitating third party sale of electricity by the Petitioner in discharge of its statutory obligation under Section 39(2) and 40(2) of the Electricity Act, 2003;*
- iii) *direct Respondent No.1 to accept and purchase all the energy generated by the Petitioner during the period of testing and commissioning of the generation facility at the rate prescribed in Clause 5(b)(ii) of E.P.A. dated 25.10.2004 and Respondent Nos.1 to 3 be directed to supervise and monitor the testing and commissioning of the generation facility and in the event Respondent No.2 is not agreeable to purchase the testing power, the Petitioner be permitted to sell the same to the third party purchaser;*
- iv) *hold and declare that the Petitioner is relieved of its RP obligation as against Respondent No.2 in view of permission for third party sale granted in favour of the Petitioner;*
- v) *hold and declare that the direction issued by Respondent No.1 to supply energy (captive energy) through open access to M/s. Umred Agro Complex Ltd., the co-generation Associate of the Petitioner as per letter dated 10.05.2007 is illegal and arbitrary and it be held and declared that the Petitioner is entitled to supply captive energy to M/s. Umred Agro Complex Ltd., by laying a direct supply line;*
- vi) *In view of urgency involved in the case, the present Petition may kindly be heard and decided by granting expeditious hearing;*
- vii) *Grant any other reliefs which this Hon'ble Commission deems fit in the facts and circumstances of the case.”*

The said case was decided by the Commission on 06.05.2008 against the Petitioner. The Commission in its order dated 06.05.2008 has held that Clause 7.4 of EPA was illegal, inoperative and un-enforceable being inconsistent with the principles of EPA as approved by the Commission in its order dated 16.08.2002. It also held that



Clause 7.4 and 8.4 of the EPA operate in different circumstances and there was nothing in Clause 8.4 which precludes the Petitioner from effecting third party sale from the beginning itself. Respondents were directed to enter into Energy Transmission/Wheeling Agreement with the Petitioner to facilitate third party sale. The Petitioner, Yash Agro accordingly informed MSEDCL on 19.05.2008 to complete all necessary facilities with a view to facilitate third party sale. MSEDCL however, vide letter dated 21.05.2008 informed the Petitioner that Clause 7.4 of EPA was deleted by the Commission's order dated 06.05.2008 and, hence, there was no provision of third party sale by the Petitioner. The Petitioner was advised to inject the entire energy in the state grid in terms of EPA. The Petitioner filed Petition no. 25 of 2008 before the Commission complaining against it. The prayers of the Petitioner in Case no. 25 of 2008 are as under:

- “i) hold and declare that the action/decision of Respondent No.1 preventing the Petitioner from third party sale and insisting for supply of entire surplus energy to MSEDCL as per E.P.A. dated 25.10.2004 communicated vide communication dated 21.05.2008 (Annexure-1) is illegal, arbitrary and irrational and the said action/decision may kindly be quashed and set aside.*
- ii) by a suitable direction Respondent Nos. 1 to 3 be commanded to permit the Petitioner to make third party sale of electricity from the date of commencement of the generation facility;*
- iii) by a suitable direction Respondent Nos. 1 to 3 be commanded to provide non discriminatory open access to its distribution and transmission system for facilitating third party sale of electricity by the Petitioner within one week from the date of the order.*
- iv) By a suitable direction Respondent No. 1 be commanded to complete all necessary actions for synchronizing the plant, metering arrangements, ensure smooth evacuation of power to facilitate third party sale of electricity;*
- v) It be held and declared that in view of option for third party sale exercised by the Petitioner, the E.P.A. dated 25.10.2004 would stand revoked/terminated and all the rights and liabilities of the parties arising there from would also stand extinguished with immediate effect;*
- vi) In view of extreme urgency in the matter the Petition be heard and decided on priority by granting expeditious hearing;*
- vii) Grant any other reliefs which this Hon'ble Commission deems fit in the facts and circumstances of the case.”*

The Petitioner also filed a Petition no. 28 of 2008 on 02.06.2008 and lodged complaint against MSEDCL under Section 142 read with Section 149 of the Electricity Act 2003. The prayers of the Petitioner in Case no. 28 of 2008 are as under:



1. *hold that Respondent No.1 is guilty of non-compliance of the directions issued by this Hon'ble Commission as per Order dated 06.05.2008 in Case No. 93 of 2007 and Respondent No. 1 may kindly be punished for intentional non-compliance of the directions as per the provisions of Section 142 read with Section 149 of the Electricity Act, 2003;*
2. *by way of interim mandatory directions the Respondents Nos. 1 to 3 be directed to purge the disobedience by immediately providing non-discriminatory open access to its distribution and transmission system for facilitating third party sale by entering into a connectivity agreement as well as wheeling agreement and also to complete all necessary actions for synchronising the plant, metering arrangement, ensures smooth evacuation of power to facilitate third party sale of electricity by the Petitioner."*

The Commission has disposed of both the aforesaid Petitions on 08.08.2008 by rejecting the contention of the Petitioner stating that the decision for third party sale ought to have been taken before execution of the EPA and since the Petitioner has already executed EPA it cannot opt for third party sale. The Commission in the impugned order has observed that Clause 7.4 of the EPA should not have been there at all as the EPA was supposed to be and required to be in accordance with the orders passed by the Commission on 15.07.2002 and 16.08.2002. Commission further ruled "*that Clause 7.4 in the EPA has been incorrectly introduced. If a developer had opted to sell to the third party from the "beginning itself" then the developer would not have entered into the EPA itself since EPA is a contract to buy and sell binding both the parties.....*". The Commission further held that "*Clause 7.4 of the EPA dated October 25, 2004 is invalid, inoperative and unenforceable as it is inconsistent with the Principles of EPA approved by the Commission in its Order dated August 16, 2002*".

- d. Being aggrieved by the order dated 08.08.2008 of the Commission, the Petitioner had filed the appeal No. 95 of 2008 before the Hon'ble Appellate Tribunal. The Hon'ble tribunal vide judgment dated 24.03.2009 was pleased to allow the appeal filed by the Petitioner and held that Petitioner, Yash Agro can choose to opt for third party sale option as given to them in the EPA since any supply from the project has not yet commenced.
- e. Petitioner further submitted that, in view of the judgment of the Hon'ble Tribunal the Respondent vide its letter dated 02.04.2009 had granted open access for third party sale and expressly terminated the EPA dated 25.10.2004. From the date of



granting of open access for sale of power to third party by the Respondent, the Petitioner is paying Distribution Open Access Charges to Respondent No.1 at the rate of Rs.1,40,000/- per month. Thus firstly the transmission system installed with 50% refundable and interest free deposit paid by the Petitioner is held to be the property of the Respondent, secondly 50% advance paid by the Petitioner has been retained and thirdly monthly open access charges are also levied by the Respondent. It is further submitted that the Petitioner in terms of letters dated 23.02.2010, 06.04.2010 and 18.06.2010 had requested the Respondent to refund the amount of interest free deposit Rs.34,45,000/-. In view of termination of EPA the provisions of clause 10.2 of EPA had become operative and binding on the Respondent. The refund of the said amount was infact taken in to account by this Hon'ble Commission in order dated 06.05.2008 but despite all the above developments, the Respondent has avoided to act upon the said directions. As the EPA was terminated by the Respondent, the Respondent was no authority to withhold the interest free advance of Rs.34,45,000/- towards 50% cost of installation of evacuation facility. Similarly the property (evacuation facility) has always been claimed to be their property of the Respondent and the charges are being regularly collected for open access provided to the Petitioner. The evacuation facility installed in the premises of the Petitioner is being used for other consumers/ generation units. Hence the action is per se arbitrary and it was obligatory for the Respondent to refund the advance paid by the Petitioner on 02.04.2009 itself with termination of the E.P.A.

- f. The Petitioner further submitted that, the review of the order dated 06.05.2008 has been based upon the knowledge of the judgment dated 20.05.2009 in the Appeal No. 139 of 2007, M/s Nalwa Steel and Power Ltd v/s Chattisgarh State Power Distribution Co. Ltd & Ors and 09.02.2010 in the Appeal 119 of 2009, M/s Chhattisgarh State Power Distribution Co. Ltd. Vs Aryan Coal Beneficiations Pvt. Ltd. passed by the Hon'ble Appellate Tribunal. The Petitioner also put emphasis on the order dated 10.07.2010 passed by this Commission in Case No. 02 of 2010 which was on clarificatory Petition filed by M/s Abhijeet MADC Nagpur Energy Pvt Ltd., wherein the Commission had reiterated the provisions of the Electricity (Removal of Difficulty) Fifth Order 2005 as it was mentioned earlier in its order in Case no. 93 of 2007 passed on 06.05.2008 that no license is required to be obtained



from the Commission, under the EA 2003 for laying down a Dedicated Transmission Line, subject to the compliance of four pre-requisites from (a) to (d) of para 2 of the Electricity (Removal of Difficulty) Fifth Order 2005. The Petitioner had acquired the knowledge of order dated 10.07.2010 on 03.08.2010 and hence the Petition is being filed within 45 days from the date of knowledge of said order. The facts and circumstances mentioned above make it very clear that to limited findings recorded in order dated 06.05.2008 in Case No.93 of 2007 need to be reviewed so as to grant consequential reliefs by issuing appropriate directions as prayed for.

5. The Commission vide its Notice dated October 13, 2010, scheduled an admissibility hearing in the matter on November 03, 2010, and directed the Petitioner to serve a copy of its Petition along with its accompaniments on the Respondent i.e. MSEDCL and the four authorized consumer Representatives. The Commission also directed the Respondent to file their comments and serve the copy of the same on the Petitioner and authorized consumer representatives.

6. The Respondent MSEDCL filed a preliminary reply to the Petition on 02.11.2010. The reply of the Respondent was as under:

i. That the prayer of the Petitioner to refund a sum of Rs.34,45,000/- paid to the Respondent as interest free advance, with 18% p.a. interest thereon from 02.04.2009 till the date of refund, can never be allowed in a Review Petition as that are wholly and legally impermissible and therefore the Petition deserves to be rejected on this ground alone.

ii. Petitioner sought to file the Review Petition on the basis of two orders of the Hon'ble Tribunal dated 20.05.2009 and 09.02.2010 interpreting the provisions of Section 10 of the Electricity Act, 2003. The Orders have been passed after the date of the order under Review, and interpreted the provisions of Section 10 of the EA, 2003 in a different manner to what was earlier in force. And such subsequent orders do not and cannot be the sole basis for review of the Commission's earlier order. If such review is permitted, it will open the floodgates to a series of similar review Petitions seeking to modify earlier orders on the basis of different interpretations which the Authorities may decide subsequent thereto. The Petitioner is always at liberty to take such appropriate steps as may be available to them as per law. The





Petitioner's erroneous reliance on order dated 10.07.2010 in Case no. 2 of 2010 passed by the Commission is nothing but an attempt made to justify the unreasonable delay with which it had filed the Petition before the Commission as such reliance on the aforesaid order is merely illusory.

7. The admissibility hearing was postponed twice and finally on December 20, 2010 an admissibility hearing was conducted. During the hearing, the Counsel for the Petitioner Advocate Shri M. G. Ramchandran, reiterated the facts and the submissions stated in the Petition and further submitted that, this Petition is not for review of the Commission's order which has been set aside and the review is sought from a particular point of view. Review Petition is filed due to subsequent development and its effect for the future and not for the past. The reliefs asked for are not for the past but for the future. The Petitioner also relied upon the APTEL judgment dated 09.02.2010 passed in Chhattisgarh State Power Distribution Co. Ltd. Vs Aryan Coal Beneficiations Pvt. Ltd.. The findings of the Hon'ble APTEL in said judgment mentioned by the Petitioner are as follows:

*“52. Thus dedicated transmission lines which the generating station can establish can go up to the load centre. Therefore, a generating station can supply electricity to a consumer through dedicated transmission lines up to the load centre. However, if the generating company, instead of establishing a dedicated transmission line from its generating station up to a particular load centre wants to supply electricity to a large group of consumers in a particular area, then what he requires is not a dedicated transmission line but a distribution system for he is certainly not contemplating to have dedicated transmission line for each consumer. If this is the situation i.e. a generating company intends to supply to a group of consumers but not through a dedicated transmission line, then the intended activity become distribution. In that case section 12 of the Electricity Act 2003 makes no exception for him and he would need a license.”*

*“31....Thus it is clear that both, the generating company as well as the captive generating station are similarly placed.*

*32. If the load centre is the installation of the consumer then both the captive generating station and the generating company can install the dedicated transmission line up to the place of the consumer without the need to obtain any license. Load centre cannot be incorporated as not including the installation of the consumer, if such an interpretation is given, both captive generation plant and generating company cannot lay down the dedicated transmission line*



*up to the place of the consumer. So it has to be held that under the regulation no license is required to undertake supply of electricity through a dedicated transmission line without using the distribution line of the transmission company or the distribution system of the licensee.”*

In view of the said judgment a dedicated transmission line can be put up by a generating company for an individual consumer so long as it is not used for distributing electricity to a group of consumers. The law emanating from this judgment enables the Petitioner to supply electricity to UACL through a dedicated transmission line although the consumer is not a captive user of electricity. When the Petitioner requested the Respondent to permit him to supply the electricity through dedicated transmission line, the Respondent by showing the order dated 06.05.2008 of the Commission did not permit the Petitioner for supply of electricity through a dedicated transmission line.

8. The Petitioner further referred to an Order of the Commission in Case no. 02 of 2010 to show that the captive generating plant is not required to obtain any license under the EA, 2003 for establishing, operating or maintaining a dedicated transmission line. On the issue of jurisdiction of the Commission, the Petitioner referred to the decision of the Hon'ble Supreme Court in the case of Uttar Pradesh Power Corporation Ltd. Vs. National Thermal Power Corporation Ltd. which clears the nature of jurisdiction. The findings are as follows:

*“34. While exercising its power of review so far as alterations or amendment of a tariff is concerned, the Central Commission stricto sensu does not exercise a power akin to Section 114 of the Code of Civil Procedure or Order 47 Rule 1 thereof. Its jurisdiction, in that sense, as submitted by Mr Gupta, for the aforementioned purposes would not be barred in terms of Order 2 Rule 2 of the Code of Civil Procedure or the principles analogous thereto.*



35. *Revision of a tariff must be distinguished from review of a tariff order. Whereas Regulation 92 of the 1999 Regulations provides for revision of tariff, Regulations 110 to 117 also provide for extensive power to be exercised by the Central Commission in regard to the proceedings before it.*

36. *Having regard to the nature of jurisdiction of the Central Commission in a case of this nature, we are of the opinion that even principles of res judicata will have no application.*

37. *There cannot be any doubt whatsoever that while a tribunal or a court exercises adjudicatory power, although provisions of Section 11 of the Code of Civil Procedure are not applicable....”*

In view of the said Judgment there is no question of res judicata or no question of setting aside the earlier Order of the commission. Considering the present situation and subsequent order of the Commission and judgments of the Hon’ble Tribunal, the Commission may declare that a dedicated transmission line can be set up by a generating company other than captive power plant to supply to its consumers. For this reason only the Petitioner has filed the present review Petition. And even after the directions of the Commission the Respondent has not settled the recovery of the money along with interest which is a legitimate claim due to the Petitioner. Therefore, the Commission may adjudicate that claim.

9. Shri Kiran Gandhi, Advocate, Little and Co. for the Respondent, submitted that, as regards the judgment of the Hon’ble Supreme Court in the case of Uttar Pradesh Power Corporation Ltd. Vs. National Thermal Power Corporation Ltd. the judgment of the Hon’ble Supreme Court took in account the scope of review in connection with alterations in tariff. Therefore, the said judgment is not applicable in this case. The Petitioner is asking for the review of the Order passed two years ago on the basis of the fresh and different interpretation of the law as it stood thereafter.

The case of the Petitioner does not fall under the grounds set for review under



Regulation 85(A) of the Conduct of Business Regulations, 2005 or under Order 47 Rule 2 of the Civil Procedure Code. Therefore, on this sole ground the present Petition is not maintainable. In case of refund of amount paid as advance, the Petitioner may have initiate appropriate proceeding, however, Petitioner cannot ask for refund in a review proceeding. As regards the grievance that the Respondent has not complied with certain directions of the Commission, the Petitioner cannot agitate such matters in a review proceeding. Considering the Order of the Commission passed by the Commission in Case No. 02 of 2010 referred to by the Petitioner, the said order was passed on a different issue. The Present Petition is not maintainable because the conditions that are set out in the Order are not satisfied by the Petitioner. Regarding the Order dated 09.02.2010, since 2010 the Petitioner never made any submissions to the Respondent asking for permission to supply the electricity through dedicated transmission line.

10. The Respondent also opposed the Petition on the ground of delay. It is stated that the application for condonation of delay does not set out the reason for delay. Therefore the Petition needs to be rejected.
11. In light of the submissions and averments made by both parties in the present matter, the issues for consideration before the Commission are as follows:
  - i. Whether the review Petition is filed within the time specified in Regulation 85 of MERC (Conduct of Business) Regulations, 2004?
  - ii. Whether the Petition is maintainable under Regulation 85 of MERC (Conduct of Business) Regulations, 2004?
  - iii. Whether the Petitioner is entitled for the reliefs as per prayer clause?



12. Having heard the parties and after considering the materials placed before the Commission, the findings of the Commission on the aforesaid issues together are as follows:

- i. The provisions relating to review of orders of the Commission are specified in regulation 85 of the Conduct of Business regulations of the Commission which reads inter alia as follows:-

“85. (a) Any person aggrieved by a direction, decision or order of the Commission, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed, may, upon 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 direction, decision or order was passed or on **account of some mistake or error apparent from the face of the record, or for any other sufficient reasons**, may apply for a review of such order, **within forty-five (45) days of the date of the direction, decision or order**, as the case may be, to the Commission.”

{Underlining and bold added}

The present Petition was filed on 08.09.2010. The Order from which review has been sought was passed on 06.05.2008 in case No. 93 of 2007. The time limit within which the review Petition, if at all, could have been filed, would have been 21.06.2008. The present Petition has been filed after a period of more than two years after the passage of the Order dated 06.05.2008. The application for condonation of delay has not specified the reason as to why the Petitioner filed the present Petition after such a long period.

That apart, no ground for review has been made out in the Petition. In paragraph 18(7) of the order dated 06.05.2008, the Commission held that “*..In view of the above, there is nothing to preclude the Petitioner herein to establish, dedicated transmission lines so long it complies with the requirements mentioned above, and is in accordance with the*



*Commission's ruling under its Order dated November 13, 2007 in Case No. 34 of 2007.*". So therefore, what review the Petitioner now seeks is not understood neither pointed out. All other prayers are for directions upon the Petitioner and declarations in favour of the Petitioner. It is settled law that a review proceeding has limited scope. In review, only the following can be taken into account:-

- (i) the discovery of new and important matter or evidence
- (ii) some mistake or error apparent from the face of the record,
- (iii) for sufficient reasons

None of the above has been pointed out by the Petitioner herein with reference to the order dated 06.05.2008. Consequential directions cannot be sought in review proceedings. The prayers as made by the Petitioner in the present Petition are not maintainable in a review proceedings. These prayers require denovo proceedings if at all new facts could be established but certainly cannot be taken up in review proceedings. For example, how can the Commission declare that the Petitioner is entitled to supply power to UACL by a dedicated transmission line in a review proceedings without there being any single averment that such a prayer arises because of any error in the impugned order? Similarly, the Commission cannot issue directions upon the Respondent to allow the Petitioner to supply power to its co-generation Associate UACL by a dedicated transmission line without there being any single averment that such a prayer arises because of any error in the impugned order? In review proceedings, how can the Commission approve the single line Diagram (Dedicated line supply scheme) submitted by the Petitioner vide letter dated 07.05.2007. Can it be said that there is a discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the Petitioner's knowledge or could not be produced by him at the time when the impugned direction, decision or order was passed? Without making out any ground for review on one hand



and suffering from severe delay of more than two years on the other, the present  
Petition is not maintainable.

Accordingly, Case No. 55 of 2010 stands dismissed as not maintainable.

Sd/-  
(Vijay L. Sonavane)  
Member

Sd/-  
(V. P. Raja)  
Chairman



(P.B. Patil)  
Registrar, MERC

