**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY**
**(Appellate Jurisdiction)**

**REVIEW PETITION No. 12 OF 2025 & IA No. 876 OF 2025**
**IN**
**APPEAL NO. 459 OF 2024**

**Dated: 14th August, 2025**

**Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson**
**Hon'ble Smt. Seema Gupta, Technical Member (Electricity)**

**In the matter of:**

**TAMIL NADU POWER DISTRIBUTION CORPORATION LIMITED formerly, *Tamil Nadu Generation and Distribution Corporation Limited* (TANGEDCO)**
*Rep. by its Chairman cum Managing Director,*
N.P.K.R.R Maaligai,
No.144, Anna Salai,
Chennai 600002. … Review Petitioner

***VERSUS***

1. **TAMIL NADU ELECTRICITY REGULATORY COMMISSION**
*through its Secretary,*
4th Floor, SIDCO Corporate Office Building,
Thiru Vi Ka Industrial Estate
Guindy, Chennai - 600032 ... Respondent No.1

2. **M/S. SEPC POWER PRIVATE LIMITED**
*Through its Managing Director,*
MEIL House, First Floor,
395, Anna Salai, Teynampet,
Chennai – 600018. ... Respondent No.2

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| Counsel on record for the Review Petitioner(s) | : | Anusha Nagarajan for App. 1 |
| Counsel on record for the Respondent(s) | : | Poonam Verma Sengupta<br>Gayatri Aryan<br>Rajesh Jha<br>SaPriyakshi<br>Pradyumn Sharma<br>Devisi Bhuwalka for Res. 2 |

# ORDER

**PER HON'BLE SMT. SEEMA GUPTA, TECHNICAL MEMBER**

1. The Petitioner-Tamil Nadu Power Distribution Corporation Limited **("TNPDCL")** is seeking review of our judgement dated 21.04.2025 passed in Appeal No. 459 of 2024, with regard to the portion of the judgement, wherein it was held that the Petitioner/Appellant is liable to pay fixed charges to the Respondent No.2 -SEPC for the period between 01.03.2023 to 15.03.2023.

2. The review of the said judgement has been sought alleging as under:-

a) This Tribunal has held that in the absence of MoP directions in force, both TNPDCL and SEPC were bound by the terms of the PPA, and SEPC could not insist on pass-through rates when this Tribunal explicitly held that payment of fixed charges is not independent of variable charges.

b) Though this Tribunal has noted that no MoP directions were in force for the entire period between 01.01.2023 to 15.03.2023, however, this Tribunal failed to consider that there were no MoP rates during this period, since MoP rates were only available from 16.03.2023 in as much as the MoP directions dated 20.02.2023 only came into effect on 16.03.2023. This Tribunal, however, held that TNPDCL is liable to pay

fixed charges between 01.03.2023 to 15.03.2023 on the basis that the parties had consented to supply power at the MoP rates during this period, as recorded in the order dated 23.02.2023.

c) In the absence of MoP rates during the said period between 01.03.2023 to 15.03.2023, there were no agreed rates at which TNPDCL could make payment to SEPC for supply of power during this period. Even according to the reasoning of the Impugned Order, in the absence of agreed rates TNPDCL could only be held liable for fixed charges if SEPC supplied power as per the PPA.

d) Since the direction in relation to the period between 01.03.2023 to 15.03.2023 leads to an inherent contradiction in the Impugned Order, there in an error apparent on the face of record, making the Impugned Order amenable to review and modification as held in "***Reliance Infra v. MERC",*** **RP No. 13 of 2012, APTEL order dt. 02.01.2013.**

e) TNERC in its order dated 09.03.2023 directed that SEPC shall commence power supply to TNPDCL as per MoP rates issued under Section 11 from time to time. The said order makes it clear that the agreement to procure power at MoP rates was only applicable when the Section 11 directions came into force and were notified by MoP. Though the said order was taken into consideration by this Tribunal while rendering its finding for the period between 16.03.2023 to 31.03.2023, it failed to consider the same while rendering its finding for the period 01.03.2023 to 15.03.2023.

f) The aforesaid errors in the Impugned Order, makes it amenable to review as noted in "***Madhusudan Reddy v. V. Narayana Reddy"*** **(2022) 17 SCC 255.**

**3.** Per Contra, learned counsel for Respondent No.2-SEPC contended that there is no error apparent or contradiction in the challenged portion of the Impugned Judgment. The Petitioner-TNPDCL has ignored the principle established by the Impugned Judgment i.e. for the period where there was no agreement to supply power at rates beyond PPA, the Petitioner-TNPDCL is not liable to pay fixed charges. This period was between 01.01.2023 to 28.02.2023 where SEPC offered its power on pass through variable tariff and the Petitioner-TNPDCL did not agree to offtake power other than the PPA variable tariff (capped). For the period where the Petitioner-TNPDCL consented to deviate from PPA variable tariff (capped) and agreed to offtake power at MoP rates i.e. beyond the PPA variable tariff, but did not schedule power from SEPC despite such agreement, therefore, the Petitioner-TNPDCL is liable to pay fixed charges to SEPC. The principle used for denial of fixed charges for the period between 01.02.2023 till 28.02.2023 is the same for grant of relief from 01.03.2023 till 15.03.2023. The Petitioner-TNPDCL cannot accept the principle for the period 01.01.2023 to 28.02.2023 and simultaneously dispute it for the next period from 01.03.2023 to 15.03.2023. The Review Petition does not satisfy the threshold for review under Section 114 and Order XLVII Rule 1 of the Civil Procedure Code, 1908 (CPC). It is settled law that power of review can be exercised only where a glaring omission or a patent mistake is found in the order under review and placed reliance on the judgment of this Tribunal in "***Surat Citizens Council Trust v. GERC and Ors.***," (R.P. No. 1 of 2025).

4. Learned counsel for Respondent No 2- SEPC further contended that though the Petitioner-TNPDCL was aware on 20.02.2023 that MoP Section 11(1) directions were to be in force w.e.f. 16.03.2023, it has made

no submission in the pleadings stating that they had no knowledge of MoP's direction dated 20.02.2023 and, on 23.02.2023, the Petitioner agreed to offtake power at rates beyond PPA variable tariff. As such Petitioner-TNPDCL has on prior occasion procured power from SEPC at rates beyond PPA variable tariff (capped) when MoP Section 11(1) directions were not in force and paid variable tariff as per computation arrived at by the Petitioner-TNPDCL. Accordingly, learned counsel for Respondent No2- SEPC prayed for dismissal of Review Petition of TPDCL.

5. We have heard Mr. P. Wilson, learned Senior Counsel along with Ms. Anusha Nagarajan, learned Counsel for the Petitioner – TNPDCL, and Ms. Gayatri Aryan, learned Counsel for Respondent No2-SEPC and have considered the written submissions filed by the learned Counsel as well as the judgements relied upon by them.

**JURISDICTION OF THIS TRIBUNAL TO REVIEW ITS ORDERS:**

6. Section 120(2)(f) of the Electricity Act, 2003 stipulates that the Appellate Tribunal shall have, for discharging its functions under the Electricity Act, the same powers as are vested in the Civil Court under the Code of Civil Procedure while trying the suit in respect of reviewing its decisions.

Section 114 of CPC is the substantive provision dealing with scope of review and is quoted below:

> *"114. Review.—Subject as aforesaid, any person considering himself aggrieved—*
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> > *(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been*

*preferred.*
*(b) by a decree or order from which no appeal is allowed by this Code, or*
*(c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit."*

Order XLVII of CPC relates to review and Rule (1) thereunder deals with an application for review of judgment, which are reproduced herein 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. "*

7. The power of this Tribunal to review its earlier order dated 21.04.2025 passed in Appeal No. 459 of 2024 is traceable to Section 120(2)(f) of the Electricity Act, 2003, read with Section 114 and Order XLVII Rule 1 of the Code of Civil Procedure, 1908. It is well settled that the scope of an application for review is much more restricted than that of an appeal.

8. Under Order 47 Rule 1 of the Code of Civil Procedure, 1908, the jurisdiction of court exercising review is only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein. A review may be entertained only on the following grounds: (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of the record, or (iii) any other sufficient reason. The words "any other sufficient reason" must mean "a reason sufficient on grounds, at least analogous to those specified in the rule". (**Chhajju Ram v. Neki : LR 49 IA 144; Bisheshwar Pratap Sahi v. Parath Nath: LR 61 IA 378; Hari Shankar Pal v. Anath Nath Mitter : (1949) FCR 36; Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius, 1954 SCC OnLine SC 4.**

9. In a civil proceeding, an application for review is entertained only on the ground mentioned in Order 47 Rule 1 of the Code of Civil Procedure. A review petition cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except 'where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility' (**Chandra Kante v. Sk Habib [(1975) 1 SCC 674; Lily Thomas v. Union of India, (2000) 6 SCC 224).** A party is not entitled to seek review of a judgment merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so. (**Sajjan Singh v. State of Rajasthan:**

**AIR 1965 SC 845; Lily Thomas v. Union of India, (2000) 6 SCC 224 and Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi, (1980) 2 SCC 167).** The mere fact that two views on the same subject are possible is no ground to review the earlier judgment passed by a Bench of the same strength. **(Lily Thomas v. Union of India, (2000) 6 SCC 224).**

10. The power of review can be exercised for correction of a mistake, but 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 like an appeal in disguise. (**Lily Thomas v. Union of India, (2000) 6 SCC 224).** Error contemplated under the rule must be such which is apparent on the face of the record, and not an error which has to be fished out and searched. It must be an error of inadvertence. (**Lily Thomas v. Union of India, (2000) 6 SCC 224).**

11. The term 'mistake or error apparent' signifies an error which is evident from the record of the case, and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident, and detection thereof requires a long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court/Tribunal on a point of fact or law. In any case, while exercising the power of review, the concerned Court/Tribunal cannot sit in appeal over its judgment/decision. (**State of West Bengal & Ors. vs Kamal Sengupta & Anr: (2008) 8 SCC 612).**

12. In "***S. Madhusudhan Reddy v. V. Narayana Reddy & Ors.***" (2022) SCC OnLine SC 1034, (on which reliance is placed on behalf of the Petitioner), the Supreme Court held:-

> *"33. As can be seen from the above exposition of law, it has been consistently held by this Court in several judicial pronouncements that the Court's jurisdiction of review, is not the same as that of an appeal. A judgment can be open to review if there is a mistake or an error apparent on the face of the record, but an error that has to be detected by a process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise its powers of review under Order XLVII Rule 1 CPC. In the guise of exercising powers of review, the Court can correct a mistake but not substitute the view taken earlier merely because there is a possibility of taking two views in a matter. A judgment may also be open to review when any new or important matter of evidence has emerged after passing of the judgment, subject to the condition that such evidence was not within the knowledge of the party seeking review or could not be produced by it when the order was made despite undertaking an exercise of due diligence. There is a clear distinction between an erroneous decision as against an error apparent on the face of the record. An erroneous decision can be corrected by the Superior Court, however an error apparent on the face of the record can only be corrected by exercising review jurisdiction. Yet another circumstance referred to in Order XLVII Rule 1 for reviewing a judgment has been described as "for any other sufficient reason". The said phrase has been explained to mean "a reason sufficient on grounds, at least analogous to those specified in the rule" (Refer: Chajju Ram v. Neki Ram and Moran Mar BasseliosCatholicos v. Most Rev. Mar Poulose Athanasius)."*

13. The judgement under review has dealt with the issue of payment of fixed capacity charge for the periods i.e. i) 01.12.2022 to 31.12.2022 ii)

01.01.2023 to 15.03.2023 and iii) 16.03.2023 to 31.03.2023. In respect of the period 01.12.2022 to 31.12.2022 and 16.03.2023 to 31.03.2023, this Tribunal held that as MOP direction under section 11(1) was in place, Petitioner-TNPDCL was to procure power at MoP rates and could not insist upon supply of power at PPA rates, and accordingly we held that the Petitioner-TNPDCL is liable to pay for the fixed charges. As regards the period (ii) from 01.01.2023 to 15.03.2023, this Tribunal held that for the period 01.01.2023 to 28.02.2023, since there was no MoP Section 11 (1) direction in force and in the absence of any agreement to supply power between the Petitioner and Respondent No 2 beyond PPA rates, Respondent No2 -SEPC was bound to supply power at PPA rates and accordingly the Petitioner-TNPDCL was not liable for fixed charges from 01.01.2023 to 28.02.2023. This Tribunal, in Para 61 & 62 of the Impugned Judgement, after extracting the State Commission's daily order dated 23.02.2023 passed in M.P No 3 of 2022 and noting that there is consensus between the Petitioner and Respondent No 2, for supply of power at the rates fixed by the MoP from 01.03.2023, held that the Petitioner had agreed to take power from Respondent No 2 beyond PPA rates and therefore for the period from 01.03.2023 to 15.03.2023, the Petitioner is liable to pay fixed charges.

14. The judgment under review is based on the principle that where there is no agreement to supply power at rates beyond PPA, the Petitioner-TNPDCL is not liable to pay fixed charges; and when either Section 11(1) directions are in place and/or there is agreement between the parties to go beyond the terms of PPA, in that case, the Petitioner cannot insist on supply of power at PPA rate and is liable to make payment of fixed charges even if power is not scheduled by them from the Project of Respondent No 2. In

**"*Reliance Infra v. MERC"***, RP No. 13 of 2012, APTEL order dated. 02.01.2013 relied upon by the Petitioner-TNPDCL, this Tribunal noted, that though judgement under review dated 13.09.2012, had relied on the judgements of this Tribunal dated 15.02.2011 in Appeal 173 of 2009 and judgement dated 30.07.2010 in Appeal 153 of 2009, but the findings in the impugned judgement in paragraphs 11.5 and 11.6 are contrary to the findings in the judgement dated 15.02.2011 and 30.07.2010 and therefore there is error apparent on the face of the record in the Impugned Judgement under Review, and review was allowed. However, as noted in earlier paragraphs, liability of payment of fixed charges has been fixed, in the present case, based the principle that when either Section 11(1) directions are in place or there is an agreement between the parties to take power beyond PPA rates; and as such there is no error apparent of face of record and/or contradiction in the impugned judgement. On this account, the judgements relied upon by Petitioner are of no avail.

15. It is to further note that, while MOP Section 11(1) direction conveyed vide letter dated 20.02.2023 were to be effective from 16.03.2023, the Petitioner-TNPDCL has consented to take power at MOP rate from 01.03.2023 i.e. beyond PPA rate for variable charge before the applicability of MOP Section 11 (1) direction. It is not even contended in the review petition by the Petitioner that they were unaware of the MOP section 11 (1) direction order dated 20.02.2023 which made Section 11 (1) direction effective from 16.03.2023. This Tribunal, at para 40 of the impugned judgment, has also taken cognizance of the fact that in the past the Petitioner, vide its letter dated 29.04.2022, has consented to procure power from Respondent No 2-SEPC beyond PPA variable charges, and on pass through basis. Thus, the Petitioner in the past also has consented and taken

power beyond PPA rates and on pass through basis even when MOP Section 11(1) direction was not in place.

16. In any event, there is a marked distinction between an error apparent on the face of record and an erroneous judgement. An erroneous judgement can be assailed only by way of an Appeal before a higher forum, and not in review proceedings.

17. In view of above deliberations, we are of the considered view that the judgement dated 21.04.2025 passed in Appeal No. 459 of 2024 does not suffer from any error apparent on the face of the record. We see no merit in the Review Petition and the same is hereby dismissed.

**Pronounced in open court on this 14th day of August, 2025.**

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| **(Seema Gupta)** | **(Justice Ramesh Ranganathan)** |
| **Technical Member (Electricity)** | **Chairperson** |

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**REPORTABLE/~~NON-REPORTABLE~~**

***ts/ag/dk***