

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.110 of 2016

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M/S J.M.D.Alloys Limited, A company incorporated under the Indian Companies Act, 1956, having its registered office at Usha Complex, Kankarbagh Road, Patna and having its factory at Deokuli, Bihta through its Director and authorized signatory Sri Sanjay Gupta.

.... Appellant- Petitioner

Versus

1. The Bihar State Electricity Board, a body constituted under the Indian Electricity Act, 1990 having its office at Bailey Road, Patna, P.S. Kotwali, in town and district of Patna through its Chairman.
2. The Chairman, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
3. The Electrical Superintending Engineer, Patna Electrical Circle, Bihar Electricity Board, Patna having its office at R. Block, P.S.- Sachiwalaya, Patna.
4. The Electrical Executive Engineer, Commercial and Ex. Revenue, Patna Electric Circle, Bihar State Electricity Board, Patna having its office at R. Block, P.S. – Sachiwalaya, Patna.
5. The Assistant Electrical Engineer, Electric Supply Division, Bihta, Patna.

.... Respondents-Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Y. V. Giri, Sr. Advocate
Mr. Raju Giri, Advocate

For the Respondent/s : Mr. Vinay Kirti Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

C.A.V. JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 08-09-2016

With the help of this review petition, the petitioner, who is the appellant in LPA No.44 of 2014, arising out of CWJC No.6490 of 2003, has sought for review of the judgment and order, dated 11.08.2015, passed in LPA No.44 of 2014, whereby the Court dismissed the LPA.

2. The petitioner seeks review of the order, dated 11.08.2015, on two grounds, namely, that while dismissing the LPA,



this Court failed to consider that even in terms of the judgment and order dated, 06.03.2003, passed by the Supreme Court, in Civil Appeal No.8394 of 2002, the electricity bill ought to have been prepared strictly in terms of Clause 16.9 of the Electricity Tariff, 1993 (hereinafter to be referred as '1993 Tariff') and, therefore, while calculating the bill, the number of hours, in terms of Clause 16.9 of the 1993 Tariff, ought to have been 21.25 hours instead of 22.25 hours, particularly, when even the Chief Engineer, after hearing the parties, had calculated that on an average, the power consumption by the review petitioner was 21.25 hours per day and this finding was upheld by this Court as well as the Supreme Court, whereas, under the impugned electricity bill, the calculation has been made on the basis of 22.25 hours instead of 21.25 hours. This is the first error, according to the review petitioner, which had crept in at the time of preparation of the impugned bill, which, somehow, escaped the attention of this Court, while delivering the judgment and order, dated 11.08.2015, in the aforementioned LPA and, thus, there was an error apparent on the face of the record.

3. The second ground is that while computing the total bill, the load factor, in the light of Clause 16.9 of the 1993 Tariff, ought to have been reckoned as 5400 KVA and not 7200 KVA inasmuch as the load factor, in terms of Clause 16.9 of the 1993



Tariff, ought to have been taken 75% of the connected load or the contract load, whichever was higher, but this has not been done. The impugned bill has been prepared by reckoning 7200 KVA as the load factor. This, according to the petitioner, is the second error, which has crept in, while making the judgment and order, dated 11.08.2015, and this error is also, according to the review petitioner, an error apparent on the face of the record.

4. Both the errors are, thus, errors, which, contends the review petitioner, do not require any lengthy argument or examination of voluminous records and, therefore, the two errors become errors apparent on the face of the record.

5. Before we consider the rival submissions of the parties, it would be relevant to notice the facts of the case, inasmuch as it has a chequered history. The petitioner is a Company dealing with business of Iron Alloy. The factory of the company was set up in the year 1995. It had a high tension industrial connection of electricity for running induction furnaces for manufacturing of Alloys Steel products. On 26/27.08.1999, the officials of the Bihar State Electricity Board (Now Power Holding Company), on inspection, found the seal, fixed on CT/PT box, tampered. A First Information Report was lodged against the alleged theft and a bill amounting to Rs.8,85,77,131/-, dated 31.08.1999, was raised by the

Board under Clause 16.9 of 1993 Tariff, which was initially set aside by a learned single Judge of this Court by order, dated 27.09.1999, passed in C.W.J.C. No. 8939 of 1999, with a direction to prepare a fresh bill after providing a show-cause.

6. The Chief Engineer (Transmission), Bihar State Electricity Board, after issuing notice, as has been directed by order, dated 27.09.1999, passed in CWJC No.8939 of 1999, afforded an opportunity of hearing, passed an order, on 27.10.1999, again, for a sum of Rs.8,85,77,131/-. The petitioner, again, challenged the bill, dated 27.10.1999, by filing a writ petition bearing CWJC No. 10842 of 1999, which was dismissed on 13.12.1999. The petitioner preferred Letters Patent Appeal, bearing L.P.A. No. 1665 of 1999. A Division Bench of this Court partly allowed the appeal by its order, dated 18.04.2000, observing that the Electricity Duty and *Fuel surcharge* cannot be charged at thrice the rate of the Unit.

7. Both parties to the writ petition being aggrieved, preferred Special Leave Appeals, bearing Civil Appeals No. 8394 of 2002 and 8395 of 2002, before the Supreme Court. Both the appeals were dismissed, holding that the view taken by the High Court, is perfectly correct and calls for no interference. The judgment is reported in **(2003) 5 SCC 226**. After the order of the Supreme Court, the Board issued a fresh bill for Rs.16,64,88,831/- on 18.04.2003.

The bill was prepared reckoning the load factor as 7200 KVA and the average period, for which electricity was consumed, being 22:25 hours (Annexure-4).

8. Being aggrieved by the bill, dated 18.04.2003, amounting to Rs.16,64,88,831/-, the petitioner filed Title Suit No. 65 of 2003. The petitioner also filed a writ application, bearing C.W.J.C. No. 6490 of 2003, praying therein to restore electrical connection and restrain the respondent Board from taking steps including steps under Section 24 of the Indian Electricity Act and for recovery of past dues. In the year 2013, through I.A. No. 5054 of 2013, review petitioner sought to challenge the bill, dated 18.04.2003, which was allowed by the learned single Judge on 23.12.2013; but on a later day, the writ application, too, was dismissed on merit on consideration of the cases of the parties. The petitioner preferred an appeal against the order, dated 23.12.2013, aforementioned, which came to be registered as L.P.A. No. 44 of 2014. The Electricity Board, in turn, too, preferred an appeal, bearing L.P.A. No. 236 of 2014, against that part of the order, dated 23.12.2013, whereby the learned single Judge allowed I.A. No. 5054 of 2013 and permitted the writ petitioner to challenge the bill, dated 18.04.2003, aforementioned.

9. This Court by its order, dated 11.08.2015, dismissed

the appeal, bearing L.P.A. No. 44 of 2014, filed by the petitioner. The L.P.A. No. 236 of 2014 filed by the Board had become redundant and it was also disposed of accordingly.

10. Being aggrieved by the order of this Court dismissing the appeal, the writ petitioner-appellant filed appeal before the Supreme Court, which was summarily dismissed. The writ petitioner-appellant, with the help of fresh application, seeks review of the order, dated 11.08.2015, passed by us in L.P.A. No. 44 of 2014.

11. Mr. Vinay Kirti Singh, learned Counsel appearing for the Board, has raised a preliminary objection regarding the very maintainability of the review petition on the ground that the same is hit by Order 47 Rule 1 (a) of the Code of Civil Procedure. He submits that a review can be filed only on condition that no appeal has been preferred against the impugned judgment; but since the petitioner had already preferred a *Special Leave for Appeal* before the Supreme Court and the same having been summarily rejected, the present review petition is not maintainable.

12. However, the case of the review petitioner, as presented by Mr. Y. V. Giri, learned Senior counsel, is that a review petition would be maintainable if a Special Leave Petition has been summarily dismissed without assigning any reason therefor. In

support of his submission, Mr. Giri, has relied upon the decisions, in *Board of Control for Cricket in India & Another Vs. Netaji Cricket Club and Others*, reported in (2005) 4 SCC 741 (para. 88 to 92), *Fuljit Kaur vs. State of Punjab & Others*, reported in (2010) 11 SCC 455 (para 7), and *Bakshi Dev Rai (2) and Another Vs. Sudheer Kumar*, reported in (2011) 8 SCC 679.

13. Mr. Y. V. Giri, learned Senior Counsel, submits that this Court erred in observing that the respondents rightly computed the number of hours of the power used, on per day average, as 22.25 hours, in place of 21.25 hours. He submits that if the figure is rectified, the bill, dated 18.04.2003, would be halved from 16 crores and odd to almost Rs.8 crores and odd. He submits that the Supreme Court, even while dismissing the appeal preferred by the petitioner against the order, dated 18.04.2000, of the Division Bench of this Court, had observed that it was brought to its notice that on an average, the power consumed by the writ petitioner was 21.25 hours per day. On this basis, submits Mr. Y. V. Giri, learned Senior counsel, the petitioner seeks review of the order of this Court on first issue.

14. Mr. Y. V. Giri, learned Senior Counsel, next submits that the load factor, on which the punitive bill ought to have been calculated, was 5400 KVA in place of 7200 KVA. In support



of this submission, Mr. Y. V. Giri, submits that in terms of Clause 16.9 of the 1993 Tariff, the load factor ought to have been taken as 75% of the connected load or the contract load, whichever was higher. Elaborating his submission, Mr. Y. V. Giri, learned Senior Counsel submits that the contract load, in terms of agreement, was 4850 KVA, whereas the connected load was 7200 KVA. Thus, 75% of 7200 KVA would come to 5400 KVA, which is higher than the contract load of 4850 KVA, and, hence, the load factor should have been computed as 5400 KVA.

15. Resisting this review petition, Mr. Vinay Kirti Singh, learned counsel, appearing for the Board, submits that the appeal, preferred by the writ petitioner, against the order under review, was dismissed by the Supreme Court and, as such, it is not open to the petitioner to agitate the same issue in the appeal before the Division Bench. The submission of the review petitioner that the average period, for which power was consumed per day, should be 21.25 hours in place of 22.25 hours, while raising the bill, dated 18.04.2003, was also considered and rejected by the Division Bench. He submits that while rejecting the submission of the appellant-review petitioner, the Division Bench relied upon rectified bill, dated 18.01.2000, wherein the average number of hours of energy, consumed by the writ petitioner, was corrected as 22.25 hours,

which bill was also produced before the Supreme Court in SLP (Civil) No. 8071 of 2000 as Annexure-P/17. The said bill has also been brought on record as Annexure-B to the counter affidavit.

16. Learned counsel for the respondent next submits, with respect to second issue, raised by the review petitioner, that the respondent ought to have calculated the punitive bill, under Clause 16.9 of the 1993 Tariff, on taking load factor 7200 KVA in place of 5400 KVA. Learned counsel submits that it is not in dispute that a total load of 7200 KVA was required for operating two Induction Furnaces each of 6 MT capacity of the writ petitioner, which was also found operational during the inspection. Learned Counsel submits that Induction Furnaces consumers, who come under HTSS category, are governed by Special Tariff agreement and, as such, the calculation of bill is to be made on the total of connected load and not 75% of the load. On these premises, learned Counsel for the respondents submits that the review petitioner has not made out any case for review of the order of this Court, dated 11.08.2015, passed in L.P.A. No. 44 of 2014.

17. It is submitted by Mr. Vinay Kirti Singh, learned Counsel for the respondents, that under guise of review, the review petitioner cannot seek review of the case on merit and that a review petition can be filed for an error apparent on the face of record. A



review, further contends Mr. Vinay Kirti Singh, is possible under Order 47 Rule 1 of Code of Civil Procedure on three specific grounds, namely, (i) discovery of new and important matter or evidence, which, after exercise of due diligence, was not within the knowledge of the person seeking the review or could not be produced by him, when the order sought to be reviewed, was passed, (ii) mistake or error apparent on the face of the record and (iii) any other sufficient reason. It is submitted that the expression “*any other sufficient reason*” would mean such a reason, which is “*analogous*” to the other two reasons as specified hereinabove and it is not possible to review an order for a reason, which is not analogous to the two reasons that Order 47 Rule 1 of Code of Civil Procedure lays down as grounds of review.

18. Mr. Vinay Kirti Singh, learned Counsel, contends that there must be miscarriage of justice and there must be genuine palpable error in order to enable the High Court to review its own order, for, the High Court has the power of review, which inheres in every court of plenary jurisdiction to prevent miscarriage of justice to correct palpable and grave error committed by it. It was also submitted by Vinay Kirti Singh, learned Counsel, that an error apparent on face of record would mean such an order, which would strike on a mere looking at the record and would not require any

long drawn process of reasoning, whereby there may conceivably be two opinions.

19. It is the submission of Mr. Vinay Kirti Singh, learned counsel for the respondents, that the Special Leave Petition filed against the judgment and order, dated 11.08.2015, of this Court having been dismissed, the present review petitioner is not maintainable.

20. Repelling the submissions, made on behalf of the respondents, Mr. Y. V. Giri, learned Senior counsel, appearing on behalf of the petitioner, on the other hand, submits that the three grounds, as mentioned in Order 47 Rule 1 of Code of Civil Procedure, as the grounds on which alone review was possible, is not a rule of universal application inasmuch as it is possible to review an order, which is suffering from mistake of fact or law and, if necessitated, an order can be reviewed by invoking the doctrine of *actus curiae neminem gravabit*. Reliance is placed by Mr. Giri, learned Senior counsel, in support of this submission, on the decision of the Supreme Court, in ***Moran Mar Besselios Catholicos v. Most Rev. Mar Poulouse Athanasitus***, (AIR 1954 SC 526). Mr. Giri, learned Senior counsel, by referring to the decision of the Supreme Court, in ***Lily Thomas v. Union of India***, reported in (2000) 6 SCC 224, contends that the said case, while



acknowledging the fact that review is a creation of the statute and the power of review cannot be exercised as an inherent power nor can appellate power be exercised in the guise of the power of review, nevertheless, clarified that the correction of an order by a Court cannot be denied if the court finds that the error, pointed out in the review petition, was under a mistake of fact or law and/or that the earlier judgment would not have been passed, but for erroneous assumption of the fact, which, in fact, did not exist and that perpetration of such an erroneous assumption of fact shall result in miscarriage of justice. It is further contended that review by a Court is possible if the Court has taken a decision on the assumption of a fact, which did not really exist, and if the Court finds that unless the decision so taken, on erroneous assumption of fact, is interfered with, the order would result in miscarriage of justice.

21. In the present case, submits Mr. Giri, learned Senior counsel, that there is no dispute that the electricity bill has to be prepared in terms of Clause 16.9 of the Electricity Tariff and the said fact has also been accepted by the Supreme Court in its judgment and order, dated 06.03.2003, and, therefore, the respondent Electricity Board cannot be allowed to raise the bill contrary to the methodology as prescribed in Clause 16.9 of the Electricity Tariff and the petitioner cannot be directed to make



payment of such a bill simply on the ground that the earlier bill was interfered with by the Supreme Court only to the extent of the wrong charging of *fuel surcharge*. Learned Senior counsel for the petitioner submits that the Chief Engineer, having arrived at a factual finding that the average power consumed per day by the petitioner, was 21.25 hours and the said fact, having been noted by the Supreme Court in its order, dated 6.3.2003, the electricity consumption bills prepared, by taking the average hours consumed per day to be 22.25 hours, cannot be allowed to be maintained and, as such, the judgment and order, dated 11.08.2015, upholding the electricity bill, prepared by taking the average consumption to be 22.25 hours, was an error *apparent on the face of record* and the same needs rectification; as otherwise, the same would result in serious miscarriage of justice. Mr. Giri, relying on the decision of the Supreme Court, in ***Kunhayammed vs. State of Kerala***, reported in **(2000) 6 SCC 359**, submits that it is, now, well settled that dismissal of a *Special Leave Petition* by a non-speaking order, would not preclude the party from moving the High Court for review of the judgment and order of the High Court inasmuch as *doctrine of merger* does not come into effect in such a case and, therefore, the present review petition is maintainable.

22. Before we enter into the merits of the review

petition, it will be appropriate to notice when the *doctrine of merger* applies to an order passed by the Supreme Court in a *Special Leave Petition* under Article 136 of the Constitution of India. The law in this regard has been summed up, thus:

“44. To sum up, our conclusions are :

(i) Where an appeal or revision is provided against an decree passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of the law.

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is up to the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the Special Leave Petition is converted into an appeal.

(iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction



should be capable of reversing, modifying or affirming the decree put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or decree appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.”

23. There does exist a distinction between an appeal and a leave to apply for appeal. When an appeal is provided and the appeal is preferred, the appeal stands instituted; but when a leave for appeal is applied, then, until the leave is, in such a situation, granted, there is really no appeal. Hence, the disposal of the *Special Leave Petition* or of any petition for leave to appeal does not subsume the order from which the appeal arose, for, with the rejection of the petition for leave, no appeal survived. Article 136 of the Constitution of India deals with '*special leave to appeal*', which may be granted by the Supreme Court. When *special leave to appeal* is dismissed/disallowed by the Supreme Court with or without a speaking order, the order from which the appeal arose does not merge into such an order, for, as already indicated hereinabove, with the dismissal of the *Special Leave Petition*, no appeal survives and

no appeal can be said to have been borne and considered. In fact, when the *special leave to appeal* is declined, there is no appeal. Hence, question of the merger of the order into the order declining to grant special leave to appeal would not, in the light of ***Kunhayammed*** (supra), arise at all.

24. Though, the three Judge Bench, in *Khoday Distilleries Ltd. (supra)*, has referred the matter to a larger Bench, it is clear that as the law stands today, this Court does have, in the light of decision, in ***Kunhayammed*** (supra), the power to review if a case for review is made out, even if the Special Leave Petition arises out of the order, which the petitioner seeks review of, has been dismissed without assigning reasons.

25. Situated thus, we are clearly of the view that in the light of the decision in *Kunhayammed* (supra), this Court does have the power to review, if a case for review is made out.

26. Let us, now, deal with the rival submissions made by both the parties and determine the scope and ambit of the power of review of the High Court.

27. Before we enter into the question as to whether the judgment and order, under review, call for review, apposite it is, in our considered view, to bear in mind, that the scope of review, which has undergone, as the days have rolled by, some significant



changes inasmuch as there was a time, when it was considered impermissible to review a judgment and order unless a statute provides therefor; but, the Courts, with the passage of time, have concluded that justice is, after all, a virtue, which must prevail over all barriers and that the rules, procedures or technicalities of law must, if necessary, bend before justice and that such a situation may arise, when a court finds that it has rendered a decision, which it would not have rendered, but for an assumption of fact, which, in fact, did not exist and its adherence to such a faulty decision would result in miscarriage of justice. In such cases, nothing can prevent a court from rectifying its own error, because the doctrine of "*actus curiae neminem gravabit*", (i.e., an act of court shall prejudice none), can be invoked, in such a case, for correcting the error committed by the court.

28. Similarly, at one point of time, it was considered to be a rule of universal application that review by a court of its order is not possible except on three prescribed grounds, namely, (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 or order was passed, (ii) mistake or error apparent on the face of the record or (iii) any such sufficient ground, which is analogous to the

two grounds aforementioned. However, it has, now, surfaced in the light of the judicial pronouncements, that the expression, ‘*any sufficient ground*’, must be analogous to the two grounds aforementioned, is no longer a rule of universal application.

29. A review of a judgment and order is, therefore, permissible, where a glaring omission or patent mistake or grave error has crept in, because of judicial fallibility.

30. This Court must remain mindful of the basic principle of review that a review is not a rehearing of a matter on merits and cannot be lightly entertained by the Court. Observed the Supreme Court, in **Sow Chandra Kanta v. Sk. Habib**, reported in (1975) 1 SCC 674, thus:

“A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition, through different counsel, of old and overruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient. The very strict need for compliance with these factors is the rationale behind the insistence of counsels certificate, which should be a routine affair or a habitual step.”

31. Yet another principle of review is that the power of

review has to be exercised to prevent miscarriage of justice or correct grave and palpable error. Laid down the Supreme Court, in **Aribam Tuleshwar Sharma v. Aibam Pishak Sharma**, reported in **(1979) 4 SCC 389**, following its earlier decision in the case of **Shivdeo Singh v. State of Punjab (AIR 1963 SC 1009)** as follows:

“There is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers, which may enable an appellate court to correct all manner of errors committed by the subordinate court.”

(Emphasis is supplied)

32. From the underlined portion, it becomes transparent



that while an appellate Court is empowered to correct all matters of error committed by the subordinate court, review can be allowed on limited grounds and that the review cannot be sought for, much less allowed, on the ground that the decision was erroneous on merits inasmuch as such an aspect would be exclusively within the province of appellate court. Dealing with this aspect of review jurisdiction, the Supreme Court, in ***Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi*** (AIR 1980 SC 674), observed, thus:

*“Whatever be the nature of the proceeding, it is beyond dispute that a review proceeding 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.**”*

(Emphasis is added)

33. It must be, however, kept in mind that the above observations were made by the Supreme Court, while considering the scope of Article 137 of the Constitution read with Order 47 Rule 1 CPC and Order XL Rule 1 of the Supreme Court Rules, and held, in ***Northern India Caterers (India) Ltd.***(supra), as follows:

“It is well settled that a party is not entitled to seek a review of a judgment merely for the purpose of a rehearing and a fresh decision of the case.

The general principle is that a judgment pronounced by a court is final and departure from this principle is justified only when circumstances of a substantial and compelling character make it necessary to do so”.

34. For instance, *if the attention of the Court was not drawn to a material statutory provision during the original hearing, the Court will review its judgment.* (See, ***Girdhari Lal Gupta v. D. H. Mehta and Another*** (AIR 1971 SC 2162). The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice. (See, ***O.N. Mohindroo v. The District Judge, Delhi and Another*** (AIR 1971 SC 107) and ***Northern India Caterers (India) Ltd.*** (*supra*).

35. It follows, therefore, that 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. A review cannot be treated as an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed, no further petition for review can be entertained.

36. While considering the scope of the power of review, what needs to be noted is that under Section 114 of the Code, any person, considering himself aggrieved by a decree or

order of a court from which appeal is allowed, but no appeal is preferred, or where there is no provision for appeal against the order or decree, may apply for review of the decree or order, as the case may be, in the court, which made the order or passed the decree.

37. Broadly speaking, thus, under Section 114 of the Code, review of a decree or order is possible if no appeal is provided against such a decree or order or where provisions for appeal exist, but no appeal has been preferred. This is really the substantive power of review. This substantive power of review under Section 114 has not laid down any condition as a condition precedent for exercise of the power of review nor has Section 114 imposed any fetters on the court's power to review its decision. No wonder, therefore, that the Supreme Court, in **Board of Control for Cricket, India and Another v. Netaji Cricket Club and Others (AIR 2005 SC 592)**, observed:

“We are, furthermore, of the opinion that the jurisdiction of the High Court in entertaining a review application cannot be said to be ex facie bad in law. Section 114 of the Code empowers a court to review its order if the conditions precedents laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the court except those, which are expressly provided in Section 114 of the Code in terms whereof, it is

empowered to make such order as it thinks fit."

(Emphasis is added)

38. Lest the subtle but real distinction existing between the power of review, on the one hand, and the power of an appellate court, on the other, disappears completely, Order 47, Rule 1 circumscribes a court's power of review by specifying the three grounds on which review is possible, the specific grounds being, (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 or order was passed, (ii) mistake or error apparent on the face of the record and (iii) for "*any other sufficient reason*".

39. Having taken into account the said three grounds, which Order 47, Rule 1 embodies as the grounds for review, the Supreme Court, in ***Moran Mar Basselios Cathlicos v. Mar Poulouse Athanasius*** (AIR 1954 SC 526), held that power of review is circumscribed by the three grounds, which have been specified in Order 47, Rule 1.

40. Explaining the scope of the third ground of review mentioned in Order 47, Rule 1, namely, "*any other sufficient reason*", the Supreme Court, in ***Moran Mar Basselios Cathlicos*** (supra), held that "*any other sufficient reason*" cannot be "*any*



sufficient reason", but a reason, which is "*sufficient*" and, at the same time, at least, "*analogous*" to one of the two reasons as indicated hereinbefore, namely, (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 or order was passed and (ii) mistake or error apparent on the face of the record.

41. In short, thus, what ***Moran Mar Basselios Cathlicos*** (supra) laid down was that the expression, "*any other sufficient reason*", cannot be construed as "*any sufficient reason*" and that "*any sufficient reason*" cannot become a ground for review unless even such "*sufficient reason*" is "*analogous*" to one of the other two grounds mentioned in Order 47, Rule 1, namely, (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 or (ii) mistake or error apparent on the face of the record.

42. ***Board of Control for Cricket, India*** (supra) is one of those cases, which has elaborately dealt with the scope of the power of review, particularly, of the High Courts and, having considered the case of ***Moran Mar Basselios Cathlicos*** (supra), the Supreme Court has clarified, in no uncertain words, in ***Board of***

Control for Cricket, India (supra), that the rule that "any other sufficient ground" must be "analogous" to the other two grounds, as mentioned in Order 47, Rule 1, "is not a rule of universal application". The relevant observations, made, at paragraph 91, in *Board of Control for Cricket, India* (supra), in this regard, read:

"91. It is true that in *Moran Mar Basselios Cathlicos v. Most Rev. Mar Poulose Athanasius*, MANU/SC/0003/ 1954 : [1955] 1 SCR 520, this court made observations as regards limitations in the application of review of its order stating: Before going into the merits of the case it is as well to bear in mind the scope of the application for review which has given rise to the present appeal. It is needles to emphasise that the scope of an application for review is much more restricted than that of an appeal. Under the provisions in the Travancore Code of Civil procedure which is similar in terms of Order 47, Rule 1 of our Code of Civil Procedure, 1908, the court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein. It may allow a review on three specified grounds, namely (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, and (iii) for any other sufficient reason. It has been held by the Judicial Committee

that the words "any other sufficient reason" must mean "a reason sufficient on grounds, at least analogous to those specified in the rule", but the said rule is not universal.

(Emphasis is supplied)

43. We may pause here to point out that when a judgment of the Supreme Court is explained by a subsequent Bench of the Supreme Court, such an explanation of its own judgment by the Supreme Court carries the same authority as does the decision, which has been explained by it. Hence, in the face of the decision, rendered in ***Board of Control for Cricket, India*** (supra), it cannot be contended that no ground, other than the grounds mentioned in ***Moran Mar Basselios Cathlicos*** (supra), can ever become a ground for review of an order or decision by a High Court.

44. In fact, there is plethora of judicial pronouncements of the Supreme Court, which shows that there can be exceptional cases, where a deviation from the grounds of review, as propounded in ***Moran Mar Basselios Cathlicos*** (supra), is possible and one of such cases is the case of ***Lily Thomas v. Union of India***, reported in **(2000) 6 SCC 224 : 2000 CriLJ 2433**, wherein, having taken into account the facts that (a) the power of review is a creation of statute and not an inherent power, that (b) no power of review can be exercised if not given to a court or Tribunal either specifically or by



necessary implication; and that (c) under the guise of review jurisdiction, merit of a decision cannot really be examined, the Supreme Court has, in unequivocal terms, pointed out that justice is, after all, a virtue, which must prevail over all barriers and that the rules, procedures or technicalities of law must, if necessary, bend before justice and that such a situation may arise, when a court finds that it has rendered a decision, which it would not have rendered, but for an assumption of fact, which, in fact, did not exist and its adherence to such a faulty decision would result in miscarriage of justice. In such cases, rules *Lily Thomas* (supra), nothing can prevent a court from rectifying its own error, because the doctrine of "*actus curiae neminem gravabit*", (i.e., an act of court shall prejudice none), can be invoked, in such a case, for correcting the error committed by the court.

45. The real theme of the Supreme Court's decision, in *Lily Thomas* (supra), is that though the power of review cannot be exercised by a court unless the statute confers such a power and that a statutory power of review can be exercised subject to such limitations as the statute may impose, yet a court is not powerless, in an appropriate and exceptional case, to rectify its error, because "*an act of court shall prejudice none*" and, hence, in exceptional cases, a court can invoke the doctrine of "*actus curiae neminem gravabit*" for

correcting an error committed by it.

46. In fact, from the decision in *Municipal Board, Pratabgarh v. Mahendra Singh Chawla*, reported in (1982) 3 SCC 331: AIR 1982 SC 1493, what clearly emerges is that when a High Court acknowledges its error and rectifies its error, which has crept in, what the High Court really does is restore the rule of law and not defeat it. Points out the Supreme Court, in *Municipal Board, Pratabgarh* (supra), that laws cannot be interpreted and enforced divorced from their effect on human beings for whom the laws are meant. Further observed the Supreme Court, in *Municipal Board, Pratabgarh* (supra), on this aspect of law, thus,

".... Undoubtedly, rule of law must prevail but as is often said, 'rule of law must run akin to rule of life. And life of law is not logic but experience'. By pointing out the error, which according to us crept into the High Court's judgment, the legal position is restored and the rule of law has been ensured its pristine glory..."

(Emphasis is added)

47. Thus, when a court discovers that a decision rendered by it, was actually based on assumption of a fact, which was non-existent, and that the court's adherence to such a decision, which was based on non-existent fact, would result in miscarriage of justice, the Court cannot be prevented from rectifying its own error,



because an act of court, it is trite, shall prejudice none. In *Board of Control for Cricket in India vs Netaji Cricket Club*, reported in (2005) 4 SCC 741, the Supreme Court laid down that an application for review will be maintainable if “*sufficient reason*” exist therefor and what, in a given case, shall constitute “*sufficient reason*” would be a question of fact and would depend on the facts and circumstances of each case. In *Board of Control for Cricket in India* (supra), it was also held that if as a result of misunderstanding of fact or law by a court, a mistake has crept in, which the court finds would cause or has caused miscarriage of justice, such an error can and must be corrected by court by exercising the power of review. A mistake, on the part of the court, would include, according to the decision in *Board of Control for Cricket in India* (supra), a mistake in the nature of the undertaking, which may have been given by a counsel meaning thereby that when a counsel, on a mistaken belief or on an erroneous or incorrect instruction, make a statement and the court acts on such a statement; but, on a review application having been subsequently filed, the court finds that it had misunderstood the counsel’s submission or had got misled by a counsel’s submission or when the court finds that it had proceeded on an assumption of fact, which did not really exist, or when it finds that it had misinterpreted a provision of law or had acted on a misconception of law and that

the error, so crept in, was, as a result of subsequent event or otherwise, apparent on the face of the record, and that such error had caused, or would cause, miscarriage of justice, such a reason would be a '*sufficient reason*' calling for exercise of the power of review.

48. The law, on the subject of review, may, in the light of the discussions held, as a whole, be summarized thus:

(i) Ordinarily, a court or a tribunal cannot review its order or decision if the statute does not confer on the court or the tribunal, as the case may be, the power to review its own order. This apart, whatever limitations are imposed by a statute, while conferring the power of review on a court or a tribunal, the court or the tribunal, as the case may be, must adhere to the limitations, which the relevant statute may impose on the exercise of such power. Section 114 CPC, which embodies the substantive power of review of a civil court, does not impose any limitations on the court's power to review its order or decision; yet the power of review even by a civil court cannot be unguided and uncanalised, for, Order 47, Rule 1 circumscribes the court's power of review.

(ii) Though, at one point of time, it was considered to be a rule of universal application that review by a court of its order is not possible except on three prescribed grounds, namely, (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 or order was passed and (ii) mistake or error apparent on the face of the record or (iii) any such sufficient ground, which is analogous to the two grounds aforementioned, the subsequent development of law, on the subject of review, has shown that the grounds referred to, namely, that any sufficient ground must be analogous to the two sufficient grounds aforementioned is no longer a rule of universal application.

(iii) One of the cases, which has helped in the expansion of the court's power to review its order is the case of *Lily Thomas* (supra) inasmuch as *Lily Thomas* (supra) ruled that ordinarily, the power of review, being a creature of statute, cannot be exercised as an inherent power, yet such technicalities of law may have to be bent, in an appropriate cases, for the purpose of correcting an order committed by the court if such an error arises out of a presumption of fact, which was nonexistent, and when the court finds that its refusal to review its own error would cause, or has caused, grave miscarriage of justice.

(iv) It is essentially the principle behind the doctrine of "*actus curiae neminem gravabit*", which has made the court hold, in *Municipal Board, Pratabgarh* (supra), that when a court corrects

and rectifies an error, it restores the rule of law and not defeat it. Even ***Rajesh D. Darbar v. Narasingrao Krishnaji Kulkarni***, reported in **(2003) 7 SCC 219**, recognises that in an exceptional case, a court may have to review its order by invoking the doctrine of "*actus curiae neminem gravabit*".

49. It is in the backdrop of the above developments of law on the scope of review, that this review petition needs to be, now, dealt with and decided.

50. The contours of power of review which we have discussed above, have been dealt with, and succinctly laid down, by a Full Bench, speaking through one of us, the learned Chief Justice, in ***The High Court of Judicature at Patna Vs. Sri K.K. Pathak***, reported in **2015 (4) PLJR 328**.

51. Having noted the parameters and scope of the Court's power of review, let us, examine, the first ground on which the review of the judgment and order, dated 11.08.2015, of this Court is sought to be reviewed. The ground is that the compensatory electricity bill ought to have been prepared strictly in terms of Clause 16.9 of the Electricity Tariff in the light of the judgment and order, dated 6.03.2003, of the Supreme Court. It is necessary to look into the aforesaid decision of the Supreme Court. When the petitioner challenged the electricity bill, dated 31.08.1999, for Rs.



8,85,77,131/- by filing CWJC No. 8939 of 1999 before this Court, the learned Single Judge, who had heard the writ petition, directed, by judgment and order, dated 27.09.1999, that a show cause notice be given to the petitioner within a week and it would be open to the petitioner to raise all its defence against the charge of committing theft of electrical energy and/or drawing electrical energy at a load higher than its contracted demand. The learned single Judge directed that the liability of the petitioner was to be determined afresh on the basis of the final order to be passed by the Chief Engineer and that the order shall be passed by the Chief Engineer after giving an opportunity of being heard to the petitioner. The Chief Engineer (Transmission), Bihar State Electricity Board, thereafter, issued a notice, dated 13.10.1999, to the petitioner to which a reply was given by the petitioner on 20.10.1999. After affording an opportunity of personal hearing and considering the reply, the Chief Engineer passed an order, on 27.10.1999, holding, importantly enough, that clauses 16.9(A)(I)(b) and (c) of the tariff were attracted and the petitioner was liable to pay compensatory bill in terms of the aforesaid clauses of the tariff and, accordingly, a fresh bill, dated 29.10.1999, for Rs. 8,85,75,131/- was issued, which was, again, challenged by the petitioner by filing a writ petition, which was dismissed by the learned single Judge on 13.12.1999. Against the



said decision, the petitioner preferred a Letters Patent Appeal, which was partly allowed by the Division Bench by its order, dated 18.04.2000, by holding that the petitioner is liable to pay electricity charges in accordance with Clause 16.9 of the 1993 Tariff. However, with regard to *fuel surcharge*, it was held, in the Letters Patent Appeal, that in the light of Clause 16.9 of the 1993 Tariff, the *fuel surcharge* cannot be levied at thrice the rate inasmuch as Clause 16.9 of the 1993 Tariff permits consumption of electricity to be assessed at thrice the rate per unit. The judgment and order, dated 18.04.2000, aforementioned, passed in Letters Patent Appeal, was taken, in appeal, to the Supreme Court and the Supreme Court upheld the order of this Court by holding as under:

“There is no dispute that the Chief Engineer issued notice to the petitioner mentioning all the relevant facts to which the petitioner gave a reply. The petitioner was also afforded an opportunity of hearing and it appeared through a counsel who made submissions on two days and thereafter the Chief Engineer passed the order. As discussed earlier, the Chief Engineer has taken into consideration relevant factors and findings recorded by him are clearly borne out from the material available before him. It cannot be said that the order passed by him is unreasonable or perverse in any manner. The High Court therefore, rightly took the view that the order passed by the Chief

Engineer that the compensatory bill is to be prepared in accordance with Clause 16.9 of the 1993 Tariff could not be interfered with in a writ petition under Article 226 of the Constitution.”

52. From a reading of the above observations of the Supreme Court, it is clear that the Supreme Court upheld the order of this Court, whereby it was held that the Chief Engineer rightly passed the order that a compensatory bill has to be prepared in terms of Clause 16.9 of the 1993 Tariff Act. As regards charging of *fuel surcharge*, this Court had held that there being no specific provision for assessing the *fuel surcharge* at thrice the rate per unit, the said *fuel surcharge* cannot be charged at thrice the rate per unit as per Clause 16.9 of the 1993 Tariff. This was upheld by the Supreme Court.

53. Thus, it is clear that the electricity consumption bill, in the case of the petitioner, for the alleged theft of electrical energy at a load higher than the contracted demand, was to be prepared in terms of the methodology as prescribed in Clause 16.9 of the 1993 Tariff. However, the bills were claimed to have been prepared contrary to the methodology specified in Clause 16.9 of the 1993 Tariff and the same was subject matter of challenge in the writ proceedings by the petitioner on the ground that the electricity duty



demand ought to have been calculated under the formula and methodology provided in Clause 16.9 of the 1993 Tariff. The said contention was rejected by this Court only on the ground that the Supreme Court has faulted the bill only to the extent that the Electricity Board wrongly charged the electricity duty and *fuel surcharge* at thrice per unit instead of charging at per unit alone. Since the Supreme Court had upheld the order of this Court, whereby this Court held that the order of the Chief Engineer to the effect that the compensatory bill is to be prepared, according to Clause 16.9 of the 1993 Tariff, was valid, the respondent Board, it is transparent, could not have issued the electricity consumption bill contrary to the formula and methodology provided in Clause 16.9 of the 1993 Tariff.

54. At this stage, it would be pertinent to take note of Clause 16.9(A)(c) of the Tariff Act 1993, which provides the formula and methodology of preparation of consumption bill on the pilferage and/or theft of electrical energy. The said Clause 16.9(A)(c), being relevant, is reproduced below:

“Unit assessed- $L \times F \times H \times D$

Where L is the connected load in Kilo Watt.

D is the number of days for which the pilferage took place which can be established from

production of satisfactory evidence by the Consumer, in case there is no possible evidence to establish the period, this factor be taken equivalent to 1801 or the number of days elapsed from the date of connection/ installation of meter till the date of detection of the pilferage whichever is less.

F denotes the factors for the categories noted below:-

- (i) For domestic- $F=0.20$
- (ii) For commercial- $F=0.40$
- (iii) For Small & Medium- $F=0.50$
(upto 75 KW)
- (iv) For Large & Heavy- $F=0.75$
(with load above 75 KW)

Note: In case of Large and Heavy Power Consumers for the purpose of assessment, the Demand for the month shall be taken as Contracted Demand of the Consumer or 75 percent of the Connected Load, at the time of inspection whichever is higher.”

55. From the note appended to Clause 16.9(A)(c), it is clear that, for the purpose of assessment, the demand for the month, in the case of large and heavy power consumers, shall be taken as *contracted demand* or 75% of the connected load at the time of inspection, whichever is higher.

56. In the order, dated 27.10.1999, passed by the Chief Engineer (Transmission), which was upheld by this Court as well as



by the Supreme Court, it was clearly stated that the actual load of the petitioner company was 7200 KVA. As the Chief Engineer, in its order, dated 27.10.1999, clearly came to the conclusion that 7200KVA was the connected load, the consumption bill for a month, as per the *Note* appended to Clause 16.9(A)(c) of the 1993 Tariff, ought to have been prepared on the basis of 75% of the connected load or the contracted demand of the consumer, whichever was higher. Since 75% of the actual load and/or connected load, which was 7200 KVA, was higher than the contracted load, 75% of 7200 KVA ought to have been taken to be the power consumption per month for preparation of bill as per Clause 16.9(A)(c) of the 1993 Tariff. However, it transpires that the consumption bill was prepared at 7200 KVA per month without considering the *Note* appended to Clause 16.9(A)(c) of the 1993 Tariff.

57. What emerges and crystallizes from the above discussion is that since the consumption bill ought to have been prepared in terms of Clause 16.9 of the 1993 Tariff, as per the order of the Chief Engineer, which was upheld by this Court as well as the Supreme Court, the raising of the bill, contrary to Clause 16.9 of the 1993 Tariff, is *prima facie* illegal and contrary to the judgment and order, dated 18.04.2000, of this Court and upheld by the order, dated 06.03.2003, of the Supreme Court.

58. With regard to the above, the observations made by this Court, while rejecting the objections of the petitioner towards raising of the bill contrary to Clause 16.9 of the 1993 Tariff, are reproduced below:

“It would not be appropriate for us to go into nitty-gritty of such issues as the Supreme Court has faulted the bill only to the extent Electricity Board wrongly charged electricity duty and fuel surcharge at thrice per unit instead of charging at per unit alone. Direction of the Division Bench, upheld by the Supreme Court, also delete the additional amount of electricity duty and fuel surcharge to the extent mentioned, which has been done. Hence we do not find any merit on the submissions made on behalf of the first appellant.”

59. While arriving at the aforesaid conclusion, this Court, inadvertently, failed to take notice of the fact that the Supreme Court had clearly held that the consumption bill has to be prepared strictly in terms of Clause 16.9 of the 1993 Tariff and as it has, now, been brought to the notice of this Court that the bill was not prepared in terms of Clause 16.9 of the 1993 Tariff, it becomes transparent if this illegality is allowed to survive, the same will cause grave miscarriage of justice as the same will be contrary to the order of this Court as well as the Supreme Court. The error, so pointed out, is an error, which is apparent on the face of the record,

and does not require a long drawn process of reasoning. This Court, while exercising the extra-ordinary jurisdiction under Article 226, cannot allow such a patent illegality to persist, which is clearly contrary to the decision this Court as well as the Supreme Court, when the same would not only cause great prejudice to the review petitioner, but will also lead to grave miscarriage of justice.

60. In the above view of the matter, the respondent Board needs to be directed to raise a consumption bill fresh in terms of the formula and methodology prescribed in Clause 16.9 of the 1993 tariff keeping in view what have been pointed out above.

61. In so far as the contention of the review petitioner to the effect that in spite of the order of the Chief Engineer to the effect that the average basis of power consumption was 21.25 hours per day, the consumption bill was prepared by taking the average consumption to be 22.25 hours per day, we have perused the order of the Chief Engineer, dated 27.10.1999, and we find that the Chief Engineer clearly held that "*on average basis the power was consumed at the average period of 21.25 hours per day*". When such a finding of the Chief Engineer was on record in terms of the order of this Court, dated 27.09.1999, the respondent Board could not have raised the bill by taking the average hours consumed by the review petitioner as 22.25 hours per day instead of 21.25 hours per

day. The above aspect has been dealt with by this Court in judgment and order, dated 11.08.2015, by holding as under:

“36. Learned counsel for the first appellant, in the same breath, argued that the Board wrongly considered the average hours consumed per day inasmuch as 21.25 hours was the figure even according to the order of the Chief Engineer, dated 29.10.1999, contained in Annexure-2. The submission of the first appellant is only to be noticed to be rejected as the aforesaid defect, with respect to consideration of average number of hours consumed by the first appellant, was rectified in the bill, dated 18.01.2000, which was also produced before the Supreme Court by the first appellant in S.L.P.(C) NO. 8071 of 2000 as Annexure-P-17 to the memorandum of appeal. In the aforesaid bill, the average number of hours, consumed by the appellant, was corrected as 22.25 hours as supply at 33 KVA with a contract load of even 4850 KVA guaranteed supply on an average of 22.25 hours per day. As such, we agree with the submission of learned counsel for the second appellant that the second appellant has rightly taken into consideration 22.25 hours of average supply per day, while raising the bill, dated 18.04.2003.”

62. From a perusal of the above observations made by this Court in Para 36 of the judgment and order, dated 11.08.2015, which the petitioner seeks review of, it transpires that the contention



of the review petitioner that the average hours consumed should be 21.25 hours per day instead of 22.25 hours per day was rejected on the ground that the average hours, consumed by the review petitioner, was rectified in the bill, dated 18.01.2000, which was also produced before the Supreme Court in the S.L.P.(C) No. 8071 of 2000, cannot be a ground to reject the contention of the review petitioner inasmuch as the Supreme Court has not dealt with the issue as to whether the average consumption should be 21.25 hours or 22.25 hours. The review petitioner has also filed an interlocutory application being I.A. No. 5457 of 2016 placing on record the supplementary provisional compensatory bill, dated 18.01.2000, wherein, while determining the amount, hours have been taken to be 22.25 hours instead of 21.25 hours. The revised bill was prepared in terms of the judgment of this Court, dated 13.12.1999, by which the order of the Chief Engineer was upheld except to the extent of charging *fuel surcharge*. When the Chief Engineer has clearly held that the average consumption should be 21.25 hours, per day which was passed on the direction of this Court after hearing both the parties, the respondent Board could not have raised the consumption bill by taking the average hours to be 22.25 hours per day. If the consumption bill, contrary to the order of the Chief Engineer, prepared taking the average consumption to be 22.25 hours, is



allowed to stand good on record, the same shall cause great prejudice to the review petitioner. The respondent Board is bound to prepare the consumption bill in terms of the order of the Chief Engineer, which was upheld by this Court as well as the Supreme Court except to the extent of charging of *fuel surcharge*. Since the said order of the Chief Engineer has attained finality, the respondent Board is liable to prepare the consumption bill by taking the average hours as 21.25 hours per day.

63. In view of what have been discussed and pointed out above, the present review petition is allowed with the following directions:

The respondent Board shall prepare a bill fresh strictly in terms of the formula and methodology prescribed, in Clause 16.9 of the 1993 tariff, by taking the average consumption of power to be 21.25 hours. The fresh revised bill shall be prepared and issued to the review petitioner within three weeks and the review petitioner shall make the payment of the same within three weeks thereafter. It is also directed that the consumption bill shall be prepared by the respondent Board either on the basis of the contracted load or 75% of the connected load, i.e., 7200 KVA or the respondent Board shall prepare the consumption bill by taking the load factor as 5400 KVA.

64. The counsel for the review petitioner also made a

submission about charging of delayed surcharge. Needless to mention herein that since this Court has found the electricity bill to have been raised wrongly, the bill, on being revised, will not contain the delayed surcharge on the balance due in view of the Division Bench judgment of this Court in *Gaya Roller Flour Mills Pvt. Ltd. Vs. BSEB*, reported in **1995 (2) PLJR 715** as well as the judgment of the Single Judge in *Iceberg Industries Ltd. Vs. BSEB*, reported in **2010 (4) PLJR 574**.

65. However, there shall be no order as to costs.

(I. A. Ansari, CJ.)

Samarendra Pratap Singh, J. : I agree

(Samarendra Pratap Singh, J.)

Uday/-

AFR/NAFR	AFR
CAV DATE	17.08.2016
Uploading Date	14.09.2016
Transmission Date	