Shabnoor

SHABNOOR AYUB PATHAN
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

REVIEW PETITION NO.53 OF 2024
IN
WRIT PETITION (L) NO.30266 OF 2024

Coal Hub Logistics Private Limited
Shop No.B-03, Shriram Tower,
Vyapar Vihar, Bilaspupr,
Chattisgarh, 495001
through its authorised person,
Shishir Agrawal … Petitioner

V/s.

Maharashtra State Power Generation Company Ltd.
A Government Corporation incorporated under the Indian Companies Act, 1956,
having its registered office at
PRAKASHGAD, Plot No.G-9, 3rd floor,
Bandra (East) Mumbai – 400 051,
Through its Chief Engineer. … Respondent

Mr. Mandar Soman for petitioner.

Mr. Shyam Dewani a/w Ms. Amita Chaware with Mr.Chirag Chanani for respondent.

Smt. Pratibha Chavan Mali, Deputy Law Officer, MAHAGENCO and Mr. Kundar Pimple (S.E.) MAHAGENCO, are present.

CORAM	:	**DEVENDRA KUMAR UPADHYAYA, CJ & AMIT BORKAR, J.**
RESERVED ON	:	**DECEMBER 17, 2024**
PRONOUNCED ON		**DECEMBER 19, 2024**

JUDGMENT: (Per Amit Borkar, J.)

1. The petitioner has filed the present review petition seeking a review of the judgment and order dated 11th October 2024 passed in Writ Petition (L) No. 30266 of 2024. In the said judgment, this Court dismissed the petition challenging a tender condition, holding that the requirement of a tie-up with a dedicated railway siding cannot be regarded as *manifestly arbitrary* or *irrational*.

2. The facts relevant for the adjudication of the present review petition are as follows: The respondent – *Maharashtra State Power Generation Company Ltd.* (hereinafter referred to as "MAHAGENCO") issued an e-tender for the transportation of raw coal from Penganga OCM to a dedicated railway siding in Chandrapur. Clause 1.12(IV) of the tender document prescribes a *pre-qualification criterion* requiring bidders to have an exclusive tie-up with a dedicated railway siding for the dispatch of coal to MAHAGENCO. Aggrieved by the said condition, the petitioner challenged it on the grounds of arbitrariness and lack of a rational nexus with the purpose of the tender.

3. After carefully considering the submissions of the petitioner and the respondent, this Court, in its judgment dated 11th October 2024, observed that the impugned tender was a *short-term tender* for a limited duration of three months, requiring the supply of 3 lakh metric tons of coal. The Court took into account the guidelines stipulating the maintenance of a *minimum coal stock of 21 days* at power stations to ensure uninterrupted power generation. Additionally, the Court noted that the tender was necessitated by a significant increase in power demand, particularly during the upcoming festive season. Consequently, the Court held that the tender condition requiring a dedicated railway siding was justified to optimize the transportation process, minimize delays, and meet the pressing requirement for coal transportation.

4. The Court further held that the petitioner's allegation that the tender condition was *tailor-made* to favor a particular entity remained unsubstantiated. It was found that there were 12 operational railway sidings, of which 9 belonged to the railways and 3 were controlled by private entities. In view of these findings, the petition was dismissed.

5. In the present review petition, the petitioner contends that the reasoning adopted by the Court in the impugned order is flawed on the following grounds:

(i) The petitioner points to *Note-1* of Clause 1.12, which defines "similar works" as including coal lifting and transportation by road mode up to railway siding in/from WCL mines has not been considered in the judgment. The petitioner argues that the requirement for *liaisoning with railways* and arranging further dispatches by loading coal into railway wagons through *own arrangements* contradicts the purpose of imposing an exclusive tie-up condition.

(ii) The petitioner asserts that the reasoning for imposing urgency due to the anticipated increase in demand during the *Diwali festive season* is no longer valid, as the respondent has yet to issue the work order in furtherance of the tender.

(iii) The petitioner has brought on record fresh material indicating that only one entity, namely *Fuel Co* , which has recently been granted permission to operate, can meet the requirement of a dedicated siding. The petitioner argues that this reinforces their contention that the tender condition is *tailor-made* to favor a single entity.

(iv) The petitioner disputes the Court's finding that there are 12 operational railway sidings, of which 3 are controlled by private entities. It is submitted that, in reality, these sidings are already engaged in *ongoing contracts*, rendering it practically impossible for other bidders to secure a dedicated siding. The petitioner contends that the said finding is *perverse* and constitutes an error apparent on the face of the record.

6. Per contra, the learned Advocate representing the respondent vehemently opposed the review petition. He submitted that the scope of a review petition is well-settled and has been reiterated by the Supreme Court in its recent judgment in ***A. S. Raghavendra v. Bharti Airtel Limited***[1]. Relying on paragraph 4 of the said judgment, the learned Advocate emphasized that the grounds raised by the petitioner do not disclose any *error apparent on the face of the record*. He contended that the petitioner, being aggrieved

1. **2024 SCC OnLine SC 3121.**

by the judgment of this Court, cannot seek a review as a remedy. The appropriate course of action for the petitioner is to challenge the judgment before the Superior Court in accordance with law.

7. The rival contentions now fall for consideration before this Court.

8. At the very outset, it is necessary to restate the settled parameters for the exercise of review jurisdiction. The Apex Court, in ***A. S. Raghavendra*** **(supra)**, relying on a catena of judgments, including ***Sanjay Kumar Agarwal***, succinctly laid down the contours of review jurisdiction in paragraph 4 as under:

> "Relying on a host of precedents, it was held in Sanjay Kumar Agarwal (supra) as under:
>
> 16.1. *A judgment is open to review, inter alia, if there is a mistake or an error apparent on the face of the record.*
>
> 16.2. *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.*
>
> 16.3. *An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review.*

16.4. *In exercise of jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be "reheard and corrected".*

16.5. *A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise".*

16.6. *Under the guise of review, the petitioner cannot be permitted to re-agitate and re-argue questions which have already been addressed and decided.*

16.7. *An error on the face of the record must be such an error which, by mere looking at the record, strikes immediately and does not require any long-drawn process of reasoning on points where there may conceivably be two opinions.*

16.8. *Even a change in law or a subsequent decision/judgment of a coordinate or larger Bench, by itself, cannot be regarded as a ground for review.*

9. In light of the above principles, this Court will proceed to examine whether the grounds raised in the present review petition meet the strict parameters laid down by the Supreme Court for the exercise of review jurisdiction.

10. Upon perusal of the parameters laid down by the Apex Court regarding the scope of review under provisions analogous to Order 47, Rule 1 of the Code of Civil Procedure, 1908 (CPC), this Court finds that none of the grounds raised by the petitioner amount to either an *error apparent on the face of the record* or any other *sufficient cause* that would justify a review of the earlier judgment.

11. The petitioner's submission regarding the alleged non-consideration of *Note-1 of Clause 1.12* does not merit acceptance. It must be reiterated that it is within the discretion of the respondent to prescribe eligibility conditions in a tender process, provided such conditions have a sound rationale and are not arbitrary. As observed in the earlier judgment, the requirement of a dedicated railway siding was incorporated into the eligibility conditions with the clear objective of minimizing delays in coal transportation and ensuring compliance with the guidelines issued by the Central Electricity Authority, Ministry of Power. These guidelines mandate maintaining a minimum coal stock equivalent to 21 days' requirement at power stations to ensure uninterrupted power generation. The inclusion of such a requirement, therefore, serves a legitimate purpose and is directly linked to operational efficiency. This Court does not find the said condition to be *manifestly arbitrary* or *irrational* in any manner.

12. The petitioner has also sought to rely on the *non-issuance of the work order* by the respondent despite the

Diwali festive season having concluded. However, this submission cannot form a ground for review. At the time of adjudication of the original writ petition, the impending festive season and the corresponding increase in power demand were relevant considerations. The necessity to ensure the accumulation of adequate coal stock was a legitimate justification for imposing strict eligibility criteria in the tender.

13. The petitioner further seeks to rely on certain *new material* regarding the availability of a dedicated railway siding operated by a private company, namely Fuel Co, which was recently granted permission to operate. However, this submission is also without merit. The eligibility criteria laid down in the tender cannot be said to have been *tailor-made* merely because one particular company now satisfies the said condition. As held in the original judgment, the requirement of dedicated siding is aimed at ensuring the smooth and timely transportation of coal, and the petitioner has failed to substantiate allegations of arbitrariness or mala fide intent in framing the tender conditions.

14. In light of the settled principles governing the scope of a review petition, this Court is of the firm opinion that the grounds raised by the petitioner do not satisfy the threshold of *error apparent on the face of the record*. A review cannot serve as a means to re-agitate or re argue issues that have already been addressed and decided.

15. Accordingly, this Court holds that the petitioner has failed to make out a case for review of the judgment and order under consideration. The review petition is, therefore, dismissed.

16. The review petition stands dismissed accordingly.

(AMIT BORKAR, J.) **(CHIEF JUSTICE)**