

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

And

The Hon'ble Justice Supratim Bhattacharya

RVW 193 of 2022

In

FMA 4686 of 2015

ANE Industries Private Limited

Vs.

M/s. Eastern Coalfields Limited & Ors.

With

RVW 194 of 2022

In

FMA 4689 of 2015

ANE Industries Private Limited

Vs.

M/s. Eastern Coalfields Limited & Ors.

With

RVW 195 of 2022

In

FMA 4690 of 2015

Mahalaxmi Infra Contract Private Limited

Vs.

M/s. Eastern Coalfields Limited & Ors.

For the review applicant

: Mr. Kishore Dutta, Sr. Adv.

Mr. Arijit Bardhan

Mr. Vivekananda Bose

Mr. Avik Ghatak

Mr. Soham De Dhara

Mr. Ratikanta Pal

Mr. Gourab Mondal

..... advocates

For the ECL

: Mr. Debnath Ghosh, Sr. Adv.

Mr. Syed Nurul Arefin
Mr. Rahul Singh
Mr. Sanju Agarwal

..... advocates

Reserved on : 20.02.2026

Judgment on : 03.06.2026

Hiranmay Bhattacharyya, J.:-

1. Challenging the judgment and order dated September 22, 2015 passed by the learned Single Judge allowing the writ petitions, Eastern Coal Fields Limited (for short “ECL”) filed three intra court appeals which were disposed of by a judgment and order dated 08.01.2020 thereby modifying the order passed by the learned Trial Judge. Being aggrieved, by the judgment and order dated 08.01.2020, the review applicants filed petitions for Special Leave to Appeal which stood dismissed thereby granting liberty to the writ petitioners to approach the High Court by way of filing review petitions. Pursuant to the liberty granted by the Hon’ble Supreme Court, the writ petitioners approached this Court to review the judgment and order dated 08.01.2020.
2. The review petitions were thereafter assigned before this bench.
3. ECL floated a Notice Inviting Tender (for short “NIT”) dated 09.10.2009 for the purpose of hiring equipments for Mohanpur-OC-Patch at Salempur area. The offer of the review applicant was accepted and he was directed to make preliminary arrangement to execute the work under the said NIT and further approval was issued in favour of the review applicant intimating that the competent authority approved the entire work and the tenure of the works contract was for five years.
4. As per the said contract, the review applicant had to procure High Speed Diesel (for short “HSD”) directly from Indian Oil Corporation Limited (for short “IOCL”) as bulk consumer. The review applicant entered into an

agreement with the IOCL by executing a Memorandum of Arrangement dated 14.11.2012 wherein the IOCL was required to let out on hire basis, bulk outlets consisting of HSD pump, underground tank and fittings near the site to cater to the requirements of the review applicant.

5. IOCL initially charged the review applicants the price of HSD at the bulk rate but subsequently, as per the arrangement, the IOCL offered subsidized retail rate. It was, thereafter, detected that supplying HSD at the subsidized rate to the bulk consumer creates a burden on the company and as per the decision of the concerned Government, such arrangement was withdrawn and thus, the review applicant was compelled to purchase the HSD at the bulk rate inclusive of the subsidy offered to the retail consumers. This resulted in a price difference, and ECL was approached for variation/modification of the escalation clause in the Additional Terms and Conditions (for short "ATC").
6. In the 259th meeting of the Board of Directors of ECL held on 16.02.2013, the proposal for price variation of the Diesel Escalation Formula was considered and upon deliberation was approved. The resolution of the said meeting was communicated to the review applicant on 08.03.2013. Subsequently, in a meeting held on 20.02.2013, the proposal was made for the base rate of HSD on the bulk consumer price with effect from 18.01.2013 i.e., the date from which IOCL started changing the market rate on bulk purchase of HSD. The said decision was communicated to the review applicant on 14.03.2013 and was circulated amongst various authorities of ECL on 21.03.2013. Based on the aforesaid resolution, ECL charged the price of the Diesel at the higher rate at which IOCL charged the review applicant as bulk consumer.
7. Payments on the higher price of HSD were made to the review applicant between the period from 18.01.2013 and 12.11.2013. Subsequently, ECL communicated to the review applicant that in a meeting of the Additional Directors held on 18.11.2013, the earlier decision taken on 20.02.2013 has been put under suspension. The aforesaid decision for suspension of the

decision of the Additional Directors taken on 20.02.2013 was based upon a recommendation and direction of the Central Vigilance Commission (for short "CVC") which recommended that because of the sale of HSD at the retail price, the financial position of the oil companies were getting weakened and to reduce such burden, HSD to the bulk consumers should be made available at the price fixed thereof which includes the amount of subsidy given to the retail consumer.

8. Review applicants filed separate writ petitions challenging the action of ECL in deducting the difference between the rate of HSD charged from the bulk consumer and the rate of HSD charged to the retail consumer.
9. The learned Single Judge after examination of the escalation clause observed that the said clause clearly provides that in case of change in *inter alia* price of Diesel, the Contractor would be entitled to claim reimbursement for this escalation in costs. The learned Single Judge expressed an opinion that since the review applicant was getting bulk Diesel at retail rates, both parties understood the subsidized rate to be the contractual rate. After noticing that from 18.01.2013 the review applicants had to buy HSD at a much higher rate than the retail rate held that it amounts to escalation in the price of bulk Diesel essential for performance for the contract and under the escalation clause the review applicant was to be paid the difference. The learned Single Judge further held that the Functional Directors very rightly realized the injustice to the contractors, caused by the said situation and decided to reimburse them for the difference in the rates. The learned Single Judge also held that the decision of the Functional Directors amounts to modification of the contract whereby ECL promised to pay the contractor the enhanced rate of Diesel on equitable grounds.
10. In the light of the aforesaid observations, the learned Single Judge held that the decision for suspension of the decision of the Additional Director with retrospective effect is not supported by reason.

11. After hearing the learned counsel for the respective parties in the intra court appeals, three points were formulated by the Court in the judgment under review.
 - (i) Whether the writ petition was maintainable pertaining to a dispute arising out of the private contract and the interpretation of its clauses?
 - (ii) Whether the escalation clause relating to the price of Diesel incorporated in the Additional terms and conditions (for short “ATC”) was in fact valid/ modified or not.
 - (iii) Whether ECL was within its authority to withdraw/ suspend the earlier decision based on the report of Central Vigilance Commission and ancillary to it whether the CVC retains the power to pass any direction /orders on ECL to do or not to do an act covered under the said contract?
12. The first issue was held in favour of the review applicant in the judgment under review, and the third issue was not delved upon as the same had become academic and elementary.
13. The second issue was decided against the review applicant and it was held that the modified escalation formula was not incorporated in the GTC/ATC in absence of any order of ECL.
14. The learned counsel for the review applicant and ECL restricted their submission on the second issue only.
15. Mr. Datta, learned Senior advocate appearing in support of the review petitions contended that the challenge in the writ petition was confined to the decision taken by the Functional Directors in the meeting held on 18.11.2013 whereby the Functional Directors sought to keep the decision taken by them in their meeting dated 20.02.2013 in abeyance and the decision of the authorities of ECL to recover the amount paid to the review applicant by the authorities of ECL during the period between 18.01.2013 to

22.11.2013 on account of excess amount paid by the petitioners for bulk purchase of HSD and the consequent deduction of the amounts from the reported and R.A. Bills of the review applicant. He further contended that the subject matter of consideration in the writ petition did not relate to the price variation clause or the applicability of the formula for price variation.

16. Mr. Datta contended that the second issue framed in the judgment under review was, thus, beyond the scope of the writ petition. He further contended that the judgment under review would suggest the existence of two documents/communications of the same date, i.e., 20.03.2013. The first communication was the resolution of the Functional Directors dated 20.02.2013 and the second communication was for communicating the resolution of the Board of Directors dated 16.02.2013. He further contended that the first communication was on record and the second communication which was unconnected to the adjudication of the dispute, was considered by the Division Bench while passing the judgment under review.
17. Mr. Datta, however, in his usual fairness, submitted that the second communication must have been handed over to the Hon'ble Division Bench by any of the counsels appearing for the respective parties Mr. Datta, however, submitted that such document was placed before the Court by mistake.
18. Mr. Datta contended that the Division Bench while passing the judgment under review relied upon the second communication dated 20.03.2013 bearing Reference No. ECL/HQ/CMC/204 instead of the first communication dated 20.03.2013 bearing no. ECL/HQ/CMC/209. According to Mr. Datta, such an error amounts to misconception of a material fact. Mr. Datta further contended that the submission of the learned Senior advocate for the writ petitioners in course of hearing of the appeal that the "modified escalation clause" was "implemented and the benefits were extended to the respondent no. 1" i.e., review applicant is incorrect as it is contrary to the pleadings in the writ petition. He further

contended that the submission of the learned Senior Counsel for the writ petitioner being contrary to the pleadings cannot bind the writ petitioner.

19. Mr. Datta contended that misconception of fact or law by a Court or even an advocate squarely falls within the expression “sufficient reason” appearing in Order 47 Rule 1 of the Code of Civil Procedure. He further submitted that an application for review may be necessitated by way of invoking the doctrine of *actus curiae neminem gravabit*. In support of such contention Mr. Datta placed reliance upon the decision of the Hon’ble Supreme Court in the case of ***Perry Kansagra vs. Smriti Madan Kansagra***, reported at **(2019) 20 SCC 753**. Mr. Datta contended that review jurisdiction is available in a case of an error apparent on the face of the record and non-consideration of relevant documents and in support of such contention he placed reliance upon the decision of the Hon’ble Supreme Court in the case of ***Rajender Singh vs. Lt. Governor, Andaman & Nicobar Islands***, reported at **(2005) 13 SCC 289**.
20. Mr. Ghosh learned Senior Advocate appearing for ECL seriously disputed the contention of Mr. Datta. He contended that the second communication dated 20.03.2013 cannot be said to be a document extraneous to the issue in controversy as such document also form part of the Special Leave Petition. Mr. Ghosh contended that the communication dated 09.04.2013 records the approval of the Board of Directors of the ECL at the 259th meeting which purports to modify the existing Diesel Escalation formula, which was subsisting, in the 220th meeting held on 16.06.2008. He contended that by a subsequent communication dated 14.06.2013, the General Manager, ECL intimated that the modification of the price variation clause for Diesel escalation would come into effect on and from the date of issue of the Office Order by the ECL and the GTC and the bid documents would be amended accordingly. He submitted that the communication records that the Board after detailed deliberation approved that in case of ongoing contracts and future tenders the modification in the general and additional terms and conditions of the bid document would come into effect

from the date of issue of office order by ECL regarding modification/ notification of price variation clause for Diesel escalation/de-escalation. He further submitted that by a communication dated 10.12.2013, ECL has directed suspension of payment of Diesel escalation bulk rate, and the review applicants had not challenged such decision in the writ petition. He submitted that the contention of the learned Senior Advocate for the review applicant that the modified escalation formula was not raised or urged before the Hon'ble Division Bench is a misconceived one.

21. Mr. Ghosh contended that review in the garb of an appeal is not maintainable and in support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of **A.S. Raghavendra vs. Bharti Airtel Ltd.**, reported at **(2024) SCC Online SC 3121**; **S. Murali Sundaram vs. Jothibai Kannan**, reported at **(2023) 13 SCC 515**. Mr. Ghosh further contended that when the parties have entered into a contract by reducing the terms and conditions in writing, rewriting of such contract by the Court is impermissible and in support of such contention he placed reliance upon the decision of the Hon'ble Supreme Court in the case of **Venkataraman Krishnamurthy vs. Lodha Crown Buildmart (P) Ltd.**, reported at **(2024) 4 SCC 230**.
22. Heard the learned Counsels for the parties and perused the materials placed.
23. The legal position as regards the scope of a petition for review has been summarized by the Hon'ble Supreme Court in **A.S. Raghavendra (supra)**. In paragraph 4 of the said reports, the Hon'ble Supreme Court reiterated the scope of review as enunciated by the Hon'ble Supreme Court in **Sanjay Kumar Agarwal vs. State Tax Officer** reported at **(2024) 2 SCC 362**. The Hon'ble Supreme Court held thus-

“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 record justifying the court to exercise its power of review.

16.4. In exercise of the jurisdiction under Order 47 Rule 1CPC, 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 reargue and reargue the questions which have already been addressed and decided.

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

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

24. In ***Lily Thomas vs. Union of India*** reported at **(2000) 6 SCC 224** it was held that the power of review can be exercised for correction of a mistake but not to substitute a view.
25. The Hon’ble Supreme Court in ***Board of Control for Cricket in India vs. Netaji Cricket Club***, reported at **(2005) 4 SCC 741** held that application for review is also maintainable if there exists sufficient reason therefor. What would constitute “sufficient reason” would depend on the facts and circumstances of the case. The words “sufficient reason” in Order 47 Rule 1 of the Code of Civil Procedure is wide enough to include a misconception of fact or law by a Court or even an advocate. It was further held that an application for review may be insisted by way of invoking the doctrine *actus curiae neminem gravabit* .

26. In **Perry Kansagra** (*supra*) the Hon'ble Supreme Court after considering the catena of decision on exercise of the power of review summed up its conclusions in paragraph 15.1 of the said reports. The Hon'ble Supreme Court held thus-

"15.1

.....

- (i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.
- (ii) Power of review may be exercised when some mistake or error apparent on the fact of record is found. But error on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.
- (iii) Power of review may not be exercised on the ground that the decision was erroneous on merits.
- (iv) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate.
- (v) An application for review may be necessitated by way of Invoking the doctrine *actus curiae neminem gravabit*."

27. The aforesaid proposition of law has been reiterated by the Hon'ble Supreme Court in **S. Murali Sundaram** (*supra*).
28. Mr. Datta learned Senior Advocate would vehemently contend that there is sufficient reason to review the judgment dated 08.01.2020 as the same is a product of misconception of fact of law by the Court as well as the advocate. He further contended that non-consideration of a relevant material and consideration of an irrelevant material also amounts to error apparent on the face of the record.
29. Keeping in mind the aforesaid proposition of law laid down by the Hon'ble Supreme Court on exercise of the power of review, this Court shall now proceed to consider the submissions of the learned advocates for the respective parties.

30. When the appeal was taken up for consideration the learned Senior Counsel for ECL submitted that the formula for escalation for the price of the Diesel incorporated in the original ATC was never modified nor stood modified by the Functional Directors as it was subject to future order to be passed by the ECL. It was further submitted by the said learned Senior Counsel that though the decision was taken at one point of time to vary and/or modify the escalation formula later on, it was suspended on the recommendation having been received from the CVC and, therefore, any mistaken act cannot confer any special right upon the writ petitioner.
31. On the contrary, the learned Senior Counsel representing the writ petitioners in course of hearing of the appeal contended that the moment the writ petitioner was directed to purchase the Diesel without any component of subsidy offered to the retail consumer, such would be the price of the Diesel and, therefore, the Functional Directors in their meeting dated 20.02.2013 rightly recommended, approved and modified the escalation clause. The said learned Senior Counsel further submitted that once the modified escalation clause is implemented and the benefits were extended to the writ petitioner, the subsequent decision to put on hold such decision by the Functional Directors themselves on the basis of the recommendation of CVC is illegal.
32. On the basis of the aforesaid submissions the issue relating to escalation clause contained in ATC and its alleged modification by the resolution taken in the meeting of the Functional Directors was answered in the judgment under review with the following observations.
33. The contention of the learned senior counsel appearing in the ECL that subsidy can never form a part of the price was not accepted with the following observation-

“The price in ordinary parlance means the price at which the seller sells the goods and the purchaser purchases it. The subsidy is an integral part of the price and cannot be segregated there from so as to become a standalone component. It is the policy of the Government to give subsidy to the public at large who buys the diesel for personal use.

However, the Government does not propose to give incentives in the form of subsidy to the bulk consumers who are using the same for commercial purposes. The contention of Mr. Jayanta Mitra that subsidy can never form a part of the price is not acceptable if a component cannot be segregated, dissected and/or taken up from the final price charged by a seller, it remains an integral part of the price.”

34. Initially IOCL used to charge the review applicant the price of HSD at bulk rate then subsequently, as per the directions of the Government of India the review applicant was compelled to purchase HSD at the market base price (without any subsidy). Such revision of price was made effective from 18.01.2013. Review applicant submitted a letter dated 19.01.2013 before the Chairman cum Managing Director, ECL requesting the authority to modify the Diesel Escalation clause. From the communication dated March 8, 2013 it is evident that the Board of Directors of ECL in its 259th meeting held on 16.02.2013 vide item no. 259.04(H) after detailed deliberation approved that in case of ongoing and future tenders, the modification in the General and Additional terms and conditions of the bid document would come into effect from the date of issue of Office Order by ECL regarding modification/inclusion of price variation clause for Diesel escalation/ de-escalation the Performance Security & medical treatment of the contractors workmen in lying with CIL guideline.
35. The letter dated 14.03.2013 records the minutes of the meeting of the Functional Directors of ECL held on 20.02.2013 wherein it was recorded that Functional Directors, after detailed deliberation, approved the proposal for considering the base rate of HSD on bulk consumer price with effect from 18.01.2013 as brought out in agenda. The communication dated 14.03.2013 was annexed as Annexure P6 to the writ petition.
36. The General Manager (CMC) by a letter under reference no. ECL/HQ/CMC/204 dated 20.03.2013 recorded that the Board of Directors of ECL had approved the modification to be incorporated in GTC in the bid document in the 259th meeting held on 16.02.2013.

37. The General Manager (CMC) issued the letter under reference no. ECL/HQ/CMC/209 dated 20.03.2013 addressed to the CGM/GM wherein it was recorded that the Functional Directors in its meeting held on 20.02.2013 approved the proposal for base rate of HSD on consumer price with effect from 18.01.2013.
38. Mr. Datta would vehemently contend that the letter under reference no. ECL/HQ/CMC/204 dated 20.03.2013 recording that the Board of Directors had approved the modification to be incorporated in the GTC in the bid document in 259th meeting held on 16.02.2013 is extraneous to the writ petition.
39. This Court is not inclined to accept the contention of Mr. Datta for the following reasons. Firstly, in paragraph 10 of the writ petition it was specifically stated that in the 259th meeting of the Board of Directors of respondent no. 1 (i.e., ECL) held on 16.02.2013, the Board of Directors considered the subject of price variation of Diesel Escalation Formula and after much deliberation approved that in case of “ongoing” and future tenders the modification in general and additional terms and conditions of the bid document would come into effect from the date of issue of Office Order by the ECL regarding modifications/inclusion of price variation clause for Diesel escalation /de-escalation performance security etc. in line with Coal India Limited. The Memo under reference No. ECL/HQ/CMC/204 dated 20.03.2013 only records such fact.
40. Even if the contention of Mr. Datta is accepted that such document was not annexed to the writ petition but the same cannot be said to be extraneous to the issue involved in the writ petition. The letter dated 09.04.2013 was issued in continuation of the earlier letter dated 20.03.2013 in respect of modification to be incorporated in GTC in the bid document approved by ECL, Board of Directors in its 259th meeting. The letters dated 09.04.2013 and 14.06.2013 were taken into consideration while passing the judgment under review and it was held that the ECL has approved the substitution of the modified escalation formula but it would be apparent and evident from

the letter dated 14.06.2013 that it was so approved subject to further order to be issued by ECL indicating the date from which it would take effect and there is a complete silence thereafter. The following observation was made in the judgment under review.

“There is no document forthcoming that such modified escalation formula was, in fact, implemented and/or given effect to by an order of the ECL. Mere acceptance of the request and approval at one level does not confer an undisputed right upon the respondent no.1 to take shelter under the modified escalation formula in absence of any specific order passed by the ECL/appellant.”

41. The learned Single Judge held that the decision of the Functional Directors amounts to modification of the contract and a unilateral act of renouncing obligation under a contract amounts to breach thereof.
42. On the other hand, in the judgment under review, it was held that mere acceptance of the request and approval at one level does not confer a undisputed right upon the respondent no. 1 to take shelter under the modified escalation formula in the absence of any specific order passed by the ECL.
43. The judgment under review thus applied the well settled proposition of law that the Court has to simply apply the terms and conditions of the agreement as agreed between the parties [**see Venkataraman Krishnamurthy** (supra)].
44. From the submissions of the learned Senior Counsels for the respective parties, this Court is not inclined to accept the contention of Mr. Datta that the second issue framed and adjudicated by the judgment under review was beyond the scope of the writ petition.
45. After going through the judgment under review this Court finds that the issue relating to escalation clause contained in the ATC and its alleged modification taken in the meeting of the Funcitonal Directors were raised

and argued at length by the parties and such submissions were considered while passing the judgment under review.

46. Both the communications dated 20.03.2013 were available on the records of the case and submissions were made by the respective parties on the second communication dated 20.03.2013. Thus, it is not a case of either non-consideration of relevant materials or consideration of irrelevant materials.
47. There is no quarrel to the proposition of law laid down in **Rajendra Singh** (supra) that a review petition can be entertained on the ground of non-consideration of relevant documents. However, the said decision cannot come to the aid of the review applicant in view of the aforesaid observation.
48. To the mind of this Court, there is no error apparent on the face of the record in the judgment under review.
49. The review applicant attempted a rehearing of the entire matter, and the object behind such rehearing was to substitute the view taken in the judgment under review which is impermissible as observed in **Lily Thomas** (supra).
50. The judgment under review also does not suffer from any misconception of law or fact of the Court or of the advocate.
51. The review applicant/writ petitioners were represented by an experienced learned senior counsel at the time of hearing of the appeal. The said Counsel after proper appreciation of the facts and the laws applicable thereto raised specific points to defend the order of the learned Senior Judge. Such submissions were taken note of and dealt with by assigning reasons while passing the judgment under review.
52. For such reason this Court is not inclined to accept the contention of Mr. Datta that the submission of the learned Senior Counsel who represented the writ petitioners in the appeal was contrary to the case made out in the writ petition.

53. To the mind of this Court, there is no sufficient ground for review. Accordingly, the application for review stand rejected. Connected applications, if any, also stands rejected.
54. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(Supratim Bhattacharya,J.)

(Hiranmay Bhattacharyya,J.)