

Delhi Electricity Regulatory Commission
Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 110 017

Ref.F.11(828)/DERC/2012-13/C.F.No.3531/5990

Review Petition No. 01 / 2012

In the matter of: Petition to review order of the Delhi Electricity Regulatory Commission dated 01.05.2012 passed under Section 142 of the Electricity Act, 2003.

Akram (User) &
Sh. Abdul Khaliq
B-48/4, Joshi Colony
Mandawali, Fazalpur,
Delhi-110091

....Petitioner

Coram:

**Sh. P.D. Sudhakar, Chairperson, Sh. Shyam Wadhera, Member &
Sh. J.P. Singh, Member**

ORDER (REVIEW)

(Date of Order: 12.02.2013)

1. This petition has been filed by Sh. Akram (User) & Sh. Abdul Khaliq for reviewing the Commission's order dated 01.05.2012, passed in above matter under Section 142 of the Electricity Act, 2003.

2. The Commission vide its order dated 01.05.2012 had directed the CGRF to specifically give their findings on whether there has been a violation of any specific Rules / Regulations as alleged by the Petitioner. The Commission also directed the CGRF to send a copy of its Order to the Commission and adjourned the matter sine die till the order of the CGRF is passed.

3. The Petitioner vide the present review petition has submitted the following grounds for review.

- (i) That the Petition No.40 of 2012 was submitted by the petitioner not for billing dispute but for repeated violation by the Respondent for action under Section 57 (2) & 142 of the Electricity Act, 2003.

4. While dealing with an application for a review of an Order, it is very necessary to proceed with utmost caution as the powers of review are to be exercised in limited circumstances, since as a general Rule, a judgment once signed and pronounced, cannot be altered. Therefore, the Orders are not generally interfered with unless there are circumstances as defined under the law, which make it necessary for a Court to alter or modify or reverse its original judgment. The application and the scope of the review of an Order are circumscribed under Order 47, Rule 1, of Code of Civil Procedure. The power of review is not inherently vested with a Court or a Tribunal or a Commission. The right and power of review does not exist unless conferred by law expressly or by necessary implication.

5. With the enactment of the Electricity Act, 2003, the State Electricity Regulatory Commissions have been vested with powers for reviewing their decisions, directions and Orders by virtue of sub-section 1(f) of Section 94 of the Electricity Act, 2003. The application, made before the Commission, for a review of its decisions, directions and Orders, therefore, derives its scope and authority from the aforesaid section of Electricity Act 2003 read with Order 47, Rule 1, of the Code of Civil Procedure.

6. The scope of review, at the very outset, is much more strict and restricted than that of an appeal. The Court of review has only a limited jurisdiction circumscribed by the four corners and limited by the unqualified language of Order 47, Rule 1. The review powers, under the aforesaid provision are reproduced as below :-

Order 47 Rule 1 CPC.

1. Application for review of judgment.- (1) Any person considering himself aggrieved,—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(C) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of

judgment to the Court which passed the decree or made the order.

7. The above mentioned provisions of CPC mandates that a Court of review may allow a review only on three specific grounds which are as under :-

- (i) Discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the aggrieved person or such matter or evidence could not be produced by him at the time when the order was made; or
- (ii) Mistake or error apparent on the face of the record; or
- (iii) For any other sufficient reason which is analogous to the above two grounds.

8. Under Order 47, Rule 1, CPC, Order/Judgment may be opened for review, inter-alia, if there is a mistake or an error apparent on the face of record. An error which is not self-evident but has to be detected by process of reasoning cannot be said to be an error apparent on the face of record, justifying the Court to exercise its power of review under the above said provisions.

9. The application for review on the discovery of new evidence should be considered with great caution. The applicant should show that :-

- a. That such evidence was available and of undoubtfull character.
- b. That it was so material that its absence might cause miscarriage of justice.
- c. That it could not be taken into consideration with reasonable care and diligence as it has not been brought forward to the notice of court at the time of decree/order. It is a well settled principle of law that new evidence discovered must be relevant and of such character that it has clear possibility of altering the judgment and just not merely reopening the case for the sake of it.

10. Further also in the case of Parsion Devi Vs. Sumitri Devi the Supreme Court has held that;

“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 Counsel's certificate which should not be a routine affair or a habitual step. It is neither fairness to the Court which decided nor awareness of the precious public time lost what with a huge backlog of dockets waiting in the queue for disposal, for counsel to issue easy certificates for entertainment of review and fight over again the same battle which has been fought and lost (The review) stage is not a virgin ground but review of an earlier order which has the normal feature of finality."

11. Keeping in view the statutory provisions and the pronouncements of the Supreme Court of India, the scope of review has been limited into the following words :-

- (i) That the power of review can be exercised only within the domain prescribed under Order 47, Rule 1, for the rectification of an error patent and glaring on the face which would warrant reconsideration of the judgment/order so pronounced.
- (ii) Where there is nothing to contest that the error is so convincingly parched in the order that at the face of the record it would be unacceptable to continue.
- (iii) The error should be self-evident.
- (iv) Review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected.

12. In view of the above narrations, the grounds taken by the petitioner for review of order dated 01.05.2012 passed by the Commission and our observations are as under:

(i) Petitioner's submission:

That the Petition No.40 of 2012 was submitted by the petitioner not for billing dispute but for repeated violation by the Respondent for action under Section 57 (2) & 142 of the Electricity Act, 2003.

It is observed that the Commission vide its order dated 01.05.2012 has referred the aforesaid matter to the CGRF and directed to specifically give their findings on whether there has been a violation of any specific Rules / Regulations as alleged by the Petitioner. The Commission also directed the CGRF to send a copy of its Order to the Commission and adjourned the matter

sine die till the order of the CGRF is passed. The operative para of the said order of the Commission is reproduced as under:

"7. The matter was listed for hearing on 10.04.2010. The Commission heard both the parties at length. The Petitioner submitted that there is no settlement and he has deposited an amount of Rs. 5,000/-under coercion. After considering the facts and circumstances of the case the Commission observed that the issues raised by the Complainant in this Petition can only be determined after detailed examination of oral and documentary evidence which requires prolonged hearings/testimony of records and cannot be decided in a summary manner in the Commission. The Complainant has also raised a billing dispute by challenging the bill amount, therefore, the Commission decides to refer this case to the concerned CGRF with the directions to settle the bill dispute as well as give their findings on the allegations of violations of Rules & Regulations after giving full opportunities to both parties of being heard and pass an Order within 3 months of receipt of this Order. The CGRF may specifically give their findings on whether there has been a violation of any specific Rules/Regulations as alleged by the Complainant. CGRF is also directed to send a copy of its Order to the Commission

8. This matter is adjourned sine die till the Order of the CGRF is passed. Findings of the CGRF will be considered by the Commission while deciding the matter on alleged violations of the Rules/Regulations by Respondent."

In view of the aforesaid observations of the Commission in its Order dated 01.05.2012, the plea taken by the petitioner that there is an error apparent since the impugned Order fails to consider various violation by the Respondent and for action under Section 57 (2) & 142 of the Electricity Act, 2003 does not have any substance.

13. From a perusal of above, it has been observed that the issues raised in this petition are yet to be considered by the Commission upon receipt of the findings from the CGRF. Hence, the instant petition is devoid of any of the ingredients mentioned in para 3 above, which can qualify its admissibility for review. No fresh evidence/ error apparent on the face of the record have been found by the Commission which can be considered as a reason for miscarriage of justice.

14. In the light of the above narration, the Commission has not found any merit for reopening/reviewing of the above impugned order.

15. However, the Commission noted that the CGRF has not yet sent its findings in respect of the matter referred to the CGRF. Accordingly, the Commission directs the CGRF to send their findings in the above matter within 30 days from the date of this order. After receipt of these findings, the Commission will hear

both parties on merit and take a final view on the issue of violation of specific Regulations by the Respondent.

16. The Petition Receiving Officer/Jr. Law Officer of the Commission is directed to send a copy of this order to the CGRF for necessary information and compliance.

17. The review petition is disposed-off accordingly.

18. Ordered accordingly.

Sd/-
(J.P. Singh)
MEMBER

Sd/-
(Shyam Wadhera)
MEMBER

Sd/-
(P.D. Sudhakar)
CHAIRPERSON