

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

Ref.F.11(527)/DERC/2009-10/C.F.No.2243/ 5341

Petition No. 18 / 2009

In the matter of: Petition under Section 94 (1) of the Electricity Act, 2003 regarding review of the Order of the Delhi Electricity Regulatory Commission dated 20.10.2009

Mr. Arun Kanchan
Chief Executive Officer
BSES Rajdhani Power Limited
BSES Bhawan,
Nehru Place
New Delhi-110019

....Petitioner

Coram:

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

ORDER (REVIEW)

(Date of Order: 14.01.2013)

1. This petition has been filed by Sh. Arun Kanchan, CEO, BSES Rajdhani Power Limited for reviewing the Commission's order dated 20.10.2009, passed in above matter under Section 142 of the Electricity Act, 2003.

2. The Commission vide its order dated 20.10.2009 had found the petitioner guilty of not acting with due diligence and resorting to excessive overdrawal from the grid and thereby imposed a penalty of Rs.1,00,000/- under the Act.

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

- (i) The Impugned Order is patently illegal since the charge against the Petitioner was never disclosed to the Petitioner.
- (ii) Invocation of Sections 146 and 149 of the Act and the consequent imposition of penalty against the Petitioner makes the Impugned Order patently illegal.

- (iii) The Commission is not the competent forum to establish a person guilty for an offence under the Act and consequently there is an error apparent on the face of record.
- (iv) Imposition of penalty on the Petitioner is patently illegal.
- (v) The Impugned Order is patently illegal since a Final Order on the issue of overdrawal has been passed by the Commission without giving sufficient opportunity of hearing to the Petitioner.
- (vi) The Impugned Order is patently illegal as the Commission does not have the jurisdiction to impose penalty against the Petitioner as well as the Company unless non-compliance with messages from SLDC is established.
- (vii) There is error apparent since the Impugned Order fails to consider that the Company and the Petitioner acted with due diligence.

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 re-produced as below :-

7. The relevant provision of law (Order 47 Rule 1 of Civil Procedure Code) is reproduced as under:

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.

8. 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.

9. Under Order 47, Rule 1, CPC, Order/Judgment may be opened to 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.

10. 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.

11. 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."

12. 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.

13. In view of the above narrations, the grounds taken by the petitioner for review of order dated 20.10.2009 passed by the Commission and our observations are as under:

(i) Petitioner's submission:

The Impugned Order is patently illegal since the charge against the Petitioner was never disclosed to the Petitioner.

It is observed that the Commission had issued a show cause on 06.08.2009 to BRPL for explaining the reasons for the unprecedented load shedding as also to show cause as to why action be not taken against them in the following manner.

- a) As per the provision of Section 142 of the Electricity Act for failure to maintain grid discipline and indulging in persistent overdrawal from the grid in violation of IEGC/SGC provisions;
- b) And Sh. Arun Kanchan, CEO for his failure to exercise due diligence which led to the unprecedented load shedding in the area of BRPL, under Section 149 of the Electricity Act;
- c) As per provisions of Section 24 (1) of the Electricity Act, 2003 for suspension of distribution license.

In view of the said show cause notice (dated 06.08.2009), it is evident that the charges were framed against the petitioner duly mentioning the violation of various provisions of law. It is relevant to mention here that the petitioner has replied to the above show cause notice vide its letter dated 13.08.2009. Hence, there is no merit in the plea taken by the petitioner that the charge against the Petitioner was never disclosed to him.

(ii) Petitioner's submission:

Invocation of Sections 146 and 149 of the Act and the consequent imposition of penalty against the Petitioner makes the Impugned Order patently illegal.

It is observed that Commission has invoked powers under the said sections for imposition of penalty on any person who violates rules, regulations, laws and directions of the Commission.

The Commission in its order dated 20.10.2009 has already dealt with the issues at length in para 9 (a) and settled the above issue vide para no.9 (a) (xxiii) of the order. There is nothing new on record which would justify the Commission reviewing its order on this point. Hence, the plea taken by the petitioner does not have any substance.

(iii) Petitioner's submission:

The Commission is not the competent forum to establish a person guilty for an offence under the Act and consequently there is an error apparent.

The above point has already been decided by the Commission in its order dated 20.10.2009 at para No.9 (a); wherein it was held that whenever there is any violation of the provisions of this Act or Rules or Regulations made thereunder or any direction issued by the Commission, Section 142 gives jurisdiction to the Commission to impose penalty after giving such person an opportunity of being heard in the matter.

In the instant case, the petitioner was duly given opportunity while issuing the show-cause notice dated 06.08.2009 to represent his case. Therefore, the plea taken by the petitioner that the Commission is not competent to establish guilt for an offence under the Act does not have any substance.

(iv) **Petitioner's submission:**

Imposition of penalty on the Petitioner is patently illegal.

The said issue has already been decided by the Commission in its order dated 20.10.2009 in para no.9 (a) (xix). Hence, the plea taken by the petitioner that the imposition of penalty on the petitioner is patently illegal does not have any substance.

(v) **Petitioner's submission:**

The Impugned Order is patently illegal since a Final Order on the issue of overdrawal has been passed by the Commission without giving sufficient opportunity of hearing to the Petitioner.

It is observed that the Commission had issued show cause notice on 06.08.2009 wherein one week time was provided to the respondent to file his reply. Again, the Commission issued notice of hearing to the respondent on 17.09.2009 and decided to hold a public hearing on 25.09.2009 and subsequently granted time to file his reply / objections till 29.09.2009 and thereafter the Commission passed the impugned order.

Perusal of the above record shows that sufficient opportunity was given to the Petitioner for representing his case. Hence, the plea taken by the Petitioner that sufficient time has not been granted for defending his case does not have any substance.

(vi) **Petitioner's submission:**

The Impugned Order is patently illegal as the Commission does not have the jurisdiction to impose penalty against the Petitioner as well as the Company unless non-compliance with messages from SLDC is established.

The said issue has already been decided by the Commission in its order dated 20.10.2009 in para no.9 (a) (xix). Hence, the plea taken by the petitioner that the imposition of penalty on the petitioner is patently illegal does not have any substance.

(vii) Petitioner's submission:

There is error apparent since the Impugned Order fails to consider that the Company and the Petitioner acted with due diligence.

It is observed that the Commission has already decided this issue in its order dated 20.10.2009 at para no.9 (a) (xviii) and (xxiii) respectively. In the instant case the Petitioner has failed to prove that he acted with due diligence and therefore, the Commission has held the Petitioner and Company (BRPL) guilty of contravention / non-compliance of the provisions of the Delhi Grid Code and IEGC and directions of the Commission.

The relevant paragraphs of the order are as under:

“(xxviii) In the light of the above discussions, the Commission holds BRPL guilty of contravention / non-compliance of the provisions of the Delhi Grid Code and IEGC.”

“(xxiii) From the above, it is clear that the CEO, BRPL has violated the directions of the Commission and provisions of the Delhi Grid Code. Such violations constitute an offence within the meaning of Section 146 of the Electricity Act, 2003. Therefore, the provisions of Section 149 are attracted. From the facts placed on record, it is obvious that the CEO of BRPL made no effort for curtailment of over drawl during the period in question at frequency below 49.5 hz. Under these circumstances, it cannot be said that non compliance of the grid code was committed by BRPL without the knowledge of its CEO or that the CEO exercised due diligence to ensure compliance of the provisions of the Delhi Grid Code.”

Hence, the plea taken by the petitioner that there is an error apparent since the impugned Order fails to consider that the Company and the Petitioner acted with due diligence does not have any substance.

14. From a perusal of above, it has been observed that the issues raised in this petition have already been considered by the Commission in the Impugned Order and 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.

15. In the light of the above narration, the Commission has not found any merit for reopening/reviewing of the above impugned order and hence the review petition is dismissed.

16. Ordered accordingly.

Sd/-
(J.P. Singh)
MEMBER

Sd/-
(Shyam Wadhera)
MEMBER

Sd/-
(P.D. Sudhakar)
CHAIRPERSON