

Delhi Electricity Regulatory Commission
Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 17

Petition No. 4/2007

In the matter of:

Arun Kumar Datta
222, Pocket –E,
Mayur Vihar Phase –II,
New Delhi-110091.

...Review Petitioner

VERSUS

BSES Yamuna Power Ltd.
Through: its **CEO**
Shakti Kiran Building,
Karkardooma,
Delhi-110092.

...Respondent

Coram:

**Sh. Berjinder Singh, Chairman, Sh. K. Venugopal, Member &
Sh. R. Krishnamoorthy, Member.**

Appearance:

1. Sh. Arun Kumar Datta, Review Petitioner.
2. Sh. V.P. Singh, Advocate for the Respondent.
3. Ms. Sonam Jaitley, Advocate for the Respondent.
4. Sh. Rajeev Ranjan, Sr. Officer (Legal), BYPL
5. Sh. P. Saikrishna, Dy. Manager.

ORDER

(Date of Hearing: 12.04.2007)

(Date of Order: 10.05.2007)

1. The Petitioner has brought an application for review of the Commission's Order dated September 22, 2006 passed in the ARR application for the FY 2006-07. The Applicant has also filed an application for an early hearing of the review petition. However, since an Appeal was filed by BSES Yamuna Power Ltd. (Appeal No. 266/2007) before the Hon'ble Appellate Tribunal for Electricity, and since the Petitioner was also a respondent in the said case, the instant petition could not be listed and heard earlier.

2. The Review Petitioner has filed the review application in his capacity as a consumer. This application was received by the Commission on 12.1.2007. The limitation period for filing a review application is 30 days from the date of issue of the Order. The Petitioner has also not filed any application for the condonation of delay. Nevertheless, the Commission decides to condone the delay and also appreciates the efforts made by the Review Petitioner who, as an individual

consumer, has gone through the entire text of the Tariff Order and culled out the issues for review petition. The Commission has also not considered the technical formalities required for filing a review petition in this case and heard the review petition on merit within the purview of Order 47, Rule 1 of Code of Civil Procedure which prescribes the ambit within which a review application is to be considered by a court for review of its order.

3. Before the issues raised by the Review Petitioner are dealt with in this Order, it would be appropriate to set out the ambit of a review petition under Order 47 Rule 1 of Code of Civil Procedure. The Commission has been vested with powers under sub-section 1(f) of Section 94 of the Electricity Act, 2003 to review its decisions, directions and orders. This power is to be exercised within the scope of Order 47, Rule 1 of the Code of Civil Procedure. The powers vested under Order 47, Rule 1 are limited as circumscribed in the language of Order 47 Rule 1. The review power is limited to the situations which are as under: -

- a) 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
- b) Mistake or error apparent on the face of the record; or
- c) For any other sufficient reason which is analogous to the above two grounds.

4. Under Order 47 Rule 1, CPC, an Order or Judgement may be open 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 and has to be detected by process of reasoning, such an error can hardly be said to be an error apparent on the face of record, justifying exercise its power of review.

5. The Review Petitioner has submitted three points for consideration. Firstly, it is submitted by the Review petitioner that the burden of supplying electricity to the employees of Delhi Electricity Supply Undertaking (DESU) and Delhi Vidyut Board (DVB) at concessional rates should not be passed on to the consumers. It is submitted by Shri Datta that the concessional rates to the employees of erstwhile DVB and DESU have been charged in the ARR by virtue of the Tripartite Agreement which was entered into between the employees of DVB Union, DVB and Govt. of NCT of Delhi. The consumers of Delhi were not privy to the said Tripartite Agreement and as such, the cost of concessional Tariff to such

employees should not be borne by the consumers and such cost should be borne by the Government of NCT of Delhi.

6. The Commission has considered this issue of concessional tariff while issuing the Order dated 22.9.2006. The Stakeholders during the public hearing on the said ARR petition, had raised divergent views on the issue of concessional tariff to the employees. While on one hand, the DVB Pensioners Association had raised the issues for enhancing the concessional tariff available to the employees of DVB and requested for the removal of 'fixed charge' levied on the employees, on the other hand, the issue of not levying such concessional tariff had also been raised.

7. The Commission while considering the issues raised by various stakeholders have held that the concessional tariff to the employees is governed by Tripartite Agreement signed at the time of unbundling of DVB. The restructuring of State Electricity Board (DVB) was done by Govt. of NCT of Delhi under the provisions of Chapter V of Delhi Electricity Reform Act, 2000. As such, the Commission is guided by such agreement and the scheme of restructuring of erstwhile DVB. The Commission cannot interfere with the provisions of Tripartite Agreement. The present review application cannot be sustained on this issue, as there is neither any error apparent on the face of the record nor the applicant has been able to bring out any new evidence which would justify review of the impugned Order of the Commission. Therefore, this issue is not admitted for review.

8. The second issue raised by the Review Petitioner regarding the interest on loan of Rs.174 crore which has to be paid to DPCL. The Petitioner has submitted that at the time of unbundling of the DVB, the assets were valued on Business Valuation method and after calculating various elements of the Balance Sheet, the DISCOMs were required to pay Rs.174 crore to DPCL, at an interest of 12% per annum over a period of 13 years with a 4 year moratorium. It is contended by the Review Petitioner that the interest element on such loan should not be treated as a "pass through" in the ARR. It is submitted that the consumers should not be forced to pay for the assets which have been acquired by the Licensee by way of the Transfer Scheme. The Petitioner is of the view that the Licensee should pay from its own pocket, the entire amount for the assets taken over from DVB.

9. The issue of interest on loan raised by the Review Petitioner seems to have been misunderstood by him. The Petitioner has not been able to establish that

there is any error apparent on the face of the record or the Commission has not dealt with the evidence which was available to it at the time of passing the impugned order. The Tariff Order dated 22.9.2006 has elaborately dealt with the issue of interest on loan at paragraph 2.19.1, 2.19.2 and 2.19.3. The Commission had considered the submissions made by the Distribution Companies regarding the DPCL loan of Rs.174 crore which is to be serviced after moratorium of 4 years. The Commission, in its previous Tariff Orders, had opined that in case repayment and interest on this loan is considered to be passed through in ARR of the utilities, the overall sector gap will increase substantially and it will also be difficult at any stage to service this outstanding loan in the books of all successor Companies.

10. The Commission had suggested to the Distribution Companies to take up the matter of servicing the loan with the appropriate Authority without affecting the ARR of the DISCOMs. However, in absence of any outcome of such proposal it was inevitable to include the interest expenses on the said DPCL loan. The Commission in its Order at para 3.8.21 has dealt with the issue of the interest payable on the loan of DPCL. It was suggested by the Commission that the Licensee should make all efforts to swap the loan with a lower interest rate which would reduce the cost of loan repayment, which in fact has now been done by all the Distribution Companies. In view of this development, the Commission feels that the present issue is not within the scope of review and therefore, rejects the same.

11. Lastly, the Petitioner has raised the issue regarding Assets Register prepared at the time of unbundling of DVB. It is stated that the preparation of Fixed Assets register by means of Business Valuation method was irregular and was not in the interest of the consumers.

12. Sh. V.P. Singh, Advocate, appearing on behalf of the BYPL, at this juncture, informed the Commission that the Petitioner had moved a Writ Petition No. 3853 of 2002 before the Hon'ble High Court of Delhi, against the issue of preparation of Fixed Assets register at the time of unbundling of DVB which has been dismissed as withdrawn. The Petitioner has however submitted that he did not press the Writ Petition before the High Court due to prolonged and repeated adjournments.

13. The Commission after hearing the parties is of the view that the issue of Fixed Assets Register is not within the scope of this review petition because the preparation of Fixed Assets Register is not part of the Commission's impugned Order dated 22.9.2006. Therefore, this issue is not admitted for review.

14. The Commission has considered all the points raised by the Petitioner and feels that the issues raised by him do not fall within the limited scope of review powers vested in the Commission. Nevertheless, the Commission would like to record its appreciation for the efforts made by the Petitioner to prepare the present petition and then pursuing the same before the Commission. The Commission would like to encourage such public spirited individual consumers, who come forward to raise and pursue a common cause of consumers. However, for the reasons mentioned above, the review petition is rejected being devoid of merit.

15. Ordered accordingly.

Sd/-
(K. Venugopal)
MEMBER

Sd/-
(R. Krishnamoorthy)
MEMBER

Sd/-
(Berjinder Singh)
CHAIRMAN