

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

No. F. 11(437)/DERC/2007-08

Petition No. 55/2008

In the matter of: Review application filed by Sh. J.P.Garg (user) against the order of the Commission dated 16.06.2011.

And

In the matter of:

G.D. Tiwari
A-137 Wazirpur
Industrial Area
New Delhi

...Complainant

VERSUS

North Delhi Power Limited
Through its: CEO
Hudson Lines, Kindgsway Camp,
Delhi - 110009

...Respondent

Coram:

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

ORDER (REVIEW)

(Date of Order: 28.09.2011)

1. The Instant petition dated 25.7.2011 (filed on 26.7.2011) has been filed against the order of the Commission dated 16.06.2011 passed by it in the complaint no. 55 of 2008, filed under Section 142 of the Electricity Act, 2003, for non compliance of Commission's order dated 20.9.2006, wherein the settlement made in memorandum of settlement was recorded but was not complied with.
2. According to the Petitioner, the Order passed by the Commission suffers from mistakes and errors apparent on the face of record which are required to be corrected and that there are other sufficient reasons for reviewing and/or modifying the Order.

3. It is important to understand that while dealing with an application for a review of an Order, it is necessary to process the application with utmost caution as the powers of review are not ordinary powers.
4. The provisions relating to review of an Order constitute an exception to the general Rule to the effect that once a judgement is signed and pronounced, it cannot be altered. Therefore, the Orders are not generally interfered with, till there are circumstances as defined under the law which make it necessary for a Court to alter or modify or reverse its original judgement. 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 Commission have been vested with powers for reviewing its decision, 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 the review of its decision, 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 :-

“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 of 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 of 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 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 has to be detected by process of reasoning and such an error can hardly 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 un-doubtable character.
 - (b) That it was such material that its absence might cause miscarriage of justice.
 - (c) That it could not with reasonable care and diligence have been brought forward at the time of decree/order. It is well settled 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 judgement 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. The issues raised in the above petition have briefly been summarised below:

- (i) It has been alleged by the applicant that he was never provided any copy of the reply dated 30.05.2011 filed by respondent and never afforded any opportunity to respond to that either in writing or by way of hearing. As the order was passed on the basis of reply dated 30.05.2011, the same becomes very significant.
- (ii) It has been submitted that the Memorandum of agreement dated 1.6.2006 with respondent and order dated 20.09.2006 passed by this Hon'ble Commission, clearly mention about the assessed amount of about Rs. 20,000/-. In fact on the basis of this meager amount only the supply of the applicant was disconnected on 31.05.2007. Otherwise the rest of the bill was settled with respondent vide agreement dated 1.6.2006. If there was no such assessed amount, then there was no question of disconnection on 31.05.2007. The respondents are only trying to misguide this Hon'ble Commission and concealing vital information on the subject. That the other point on which the applicant would again like to clarify is about the writ petition pending before this Commission was filed in

July 2008. The writ petition before Hon'ble High Court was filed in February 2010. Thus there is no question of mentioning of writ petition in the complaint as the complaint was filed much before the writ. However in the writ before Hon'ble High court, full facts about the complaint before this Hon'ble Commission have been mentioned. Respondent in their reply dated 05.03.2010 filed before this Hon'ble Commission has enclosed copy of writ. In paragraph No. 5 of the writ, full facts have been explained. In fact the complaint and the writ operate in two different fields and have nothing common in them except that the both pertain to same connection and off shoot of inspection dated 12.05.2005. In the complaint before this Hon'ble Commission, the assessment demand after 12.05.2005 has been challenged because same is clear violation of regulation 25 (vi) of DERC Regulations, 2002. In the writ petition, the challenge is to the DAE demand i.e. demand prior to 12.05.2005 which was raised in January 2010.

13. So from perusal of the above, it has been observed that the plaintiff has come before the Commission for reviewing the above impugned order on two issues i.e.
 - (i) That the copy of the submission filed by the respondent on dated 30.05.2011 was not served to the plaintiff which is required to be submitted to him.
 - (ii) That before the commission the complainant has challenged the action of the respondent for disconnection of supply due to non-payment of assessed amount of Rs. 20,000/-.
14. The above grounds on which the petitioner has sought review of the above order do not match / fulfill the basic requirement for seeking review laid down in Section 114 read with order 47 of CPC and the scope of review as discussed in para10 of above noting.
15. As regards to non supplying of copy of the submission filed by the respondent on dated 30.05.2011 that was the synopsis of arguments and was not required to be refuted by the complainant as the hearing in the matter was completed; therefore this ground cannot be considered for review. On the 2nd ground this is to say that calculation of bill is not a subject matter for the commission to decide, however this fact was also taken in to consideration at the time of hearing and hence there is no

new evidence or fact which the complainant wants to bring to the notice of commission for the purpose of review.

16. In view of the above, it is decided that the instant review petition has no merit and hence the same is dismissed.
17. Ordered accordingly.

Sd/-
(J.P. Singh)
MEMBER

Sd/-
(Shyam Wadhera)
MEMBER

Sd/-
(P.D. Sudhakar)
CHAIRPERSON