

Delhi Electricity Regulatory Commission

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

F.11 (333)/DERC/2007-08/C.F.No. 1180/

Review Petition No. 28/2007

In the matter of:

Sh. Mahabir Singh Yadav
Chamber No. B-123,
Opp. Central hall,
Tis Hazari Court,
Delhi.

.....**Complainant**

VERSUS

North Delhi Power Ltd.
Through: its CEO
Sub-Station Building,
Hudson Lines, Kingsway Cam+p,
Delhi-110009.

.....**Respondent**

Coram:

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

Appearance:

1. Sh. K.L. Bhayana, Advisor NDPL;
2. Sh. O.P. Singh, Sr. Manager, NDPL;
3. Sh. Anurag Bansal, HOG Corp. Legal-NDPL.

ORDER

(Date of Hearing: 08.11.2011)
(Date of Order: 08.12.2011)

1. The North Delhi Power Ltd. have filed a review application under Section 94 of the Electricity Act, 2003 in Petition No. 22/2006 for reviewing the order of the Commission dated 7th May, 2007 with the following submissions:-
 - (a) That the Commission vide its Order dated 07.05.2007 has imposed a token penalty of Rs. 5000/- on the Respondent. The Respondent has requested the Commission to revisit the above impugned order mainly on the following grounds:

- (i) It has been submitted by the Applicant that the Complainant himself has admitted in his complaint that the erstwhile DVB, after installation of the meter, started raising bill provisionally on average basis and the Complainant paid Rs. 570/- on 10.07.2001, Rs. 280/- on 22.10.2001 and Rs. 150/- on 20.12.2001 against some of the bills with the hope that the connection would be restored.
 - (ii) During the LPSC Waiver Scheme floated in December 2005, a demand note was sent to the complainant by the Applicant asking him to pay the principal amount of Rs. 1233.64 which was obviously the amount which remains pending as per the bills raised by the erstwhile DVB. The amount was paid by the Complainant on 12.12.2005.
 - (iii) The above said facts established that the electricity supply to his meter was energised on 15.09.2000.
 - (iv) The above facts can also be confirmed from the statement of the Complainant who has admitted in his petition that he had paid the entire amount billed to him by the Erstwhile DVB for the period September 2000 to till December 2005.
 - (v) The averments of the Applicant in their additional reply dated 30th September 2006, insist that the meter was energised on 15th September 2000; however, the Complainant contradicted the above averments of the Respondent/Applicant.
 - (vi) The Applicant/Respondent have prayed to this Commission for reviewing its Order dated 07.05.2007 and recall levy of penalty upon the Applicant/Respondent and also dismiss the complaint filed by the Complainant.
2. The instant review petition was listed for hearing on 08.11.2011, which was attended by the officers mentioned above on behalf of the applicant, where as none appeared on behalf of the complainant.
3. Basically, the applicant, by this above application has sought review of the Commissions order of 07.05.2007 on the ground that the Commission has failed to consider the fact that the licensee has installed the meter on the premises of the complainant in the year 2000 and not in 2005 for which, the applicant has invited the attention of the Commission on the statement of facts given by the complainant. The applicant states that the meter was energised on the date of installation i.e. 15.09.2000 and there is sufficient evidence on record to support this statement. However,

the Commission in its order of 07.05.2007 at para 11 & 14 has clearly stated that the Respondent has failed to furnish any document in support of their claim that the meter was energised the same day i.e. on 15.09.2000 and in its order Commission has categorically mentioned that in the absence of any cogent proof or document to show that the connection was energised on 15.09.2000, violation of Section 43 of the Electricity Act, 2003 and Regulation 4 of DERC (Performance Standards – Metering & Billing) Regulations, 2002 is established. The operative part of the order is reproduced as under:

“Para 11 – The Commission on the date of hearing i.e. on 13.02.2007 gave two days time to the Respondent to furnish any document in support of their claim that the meter was energised the same day i.e. on 15.09.2000 but, till date no document has been filed by the Respondent. From the details available on record, it is evident that the Respondent have violated the provisions of Section 43 of the Electricity Act, 2003 as well as Regulation 4 of the DERC (Performance Standards – Metering & Billing) Regulations, 2002.

Para 14 – Considering the overall and circumstances of the case and in the absence of any cogent proof or document to show that the connection was energised on 15.09.2000, violation of Section 43 of the Electricity Act, 2003 and Regulation 4 of DERC (Performance Standards – Metering & Billing) Regulations, 2002 is established. The Commission, therefore, decides to impose a token penalty of Rs. 5,000/- against the Respondent Licensee with a further direction to comply with the orders and submit a compliance report to the Commission within 04 weeks from the date of this order.”

4. 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.
5. 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.
6. 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.

7. 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”*

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. In the course of the hearing, the representative of the applicant Sh. Anurag Bansal, HOG, Corp. (Legal), NDPL wanted to bring up facts which were not considered by the Commission while making above impugned order namely that the endorsement /signature of the complainant on the reverse of the inspection notice no. 31900 dated 15.09.2000 confirmed that

the meter was installed in his premises on dated 15.09.2000 and the allegation of the complainant is wrong to say that it was not installed after 2005.

10. However, from a perusal of the application for review and the above impugned order as well as the facts of the case, it has been observed that the very facts/information on which the applicant want to rely were already a part of the earlier proceedings and the Commission after taking into consideration all information available with it, passed the above impugned order. Hence in the instant application the applicant has not brought/raised any fresh point of fact or any error of law etc. which can qualify the above application for review under the provisions of order 47 read with Section 114 of CPC.
11. In view of the above, it has been found that there is no merit in the above review application and hence the same is rejected.
12. Ordered accordingly.

Sd/-
(J. P. Singh)
MEMBER

Sd/-
(Shyam Wadhera)
MEMBER

Sd/-
(P. D. Sudhakar)
CHAIRPERSON