



**Delhi Electricity Regulatory Commission**  
**Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 110017.**

No. F.11(1810)/DERC/2020-21

**Review Petition No. 40/2020**

**In the matter of:**      **Petition for seeking review of Tariff Order dated 28.08.2020 regarding reallocation of additional power from PPCL-III Bawana over and above the earlier allocation to NDMC in negation to the Requirements explicitly stated in the petition No. 07/2020.**

**New Delhi Municipal Council** **....Review Petitioner**

**Vs.**

**Delhi Electricity Regulatory Commission** **.... Respondent No. 1**

**State Load Dispatch Centre,** **.....Respondent No. 2**

**PPS-III, Bawana CCGT** **....Respondent No. 3**

**Coram:**

**Hon'ble Shri Justice S S Chauhan, Chairperson**

**Hon'ble Dr A. K. Ambasht, Member**

**Appearance:**

Mr. Tushar Sannu, Adv. NDMC

**ORDER**

(Date of Order: 17.03.2021)

1. The instant Review Petition has been filed u/S 94(1)(f) of the Electricity Act, 2003 read with applicable provisions of the Code of Civil Procedure, 1908 for seeking review of Tariff Order dated 28.08.2020 regarding reallocation of additional power from PPCL-III, Bawana over and above the earlier allocation to New Delhi Municipal Council (NDMC) in negation to the requirements explicitly stated in the Petition No. 07/2020 filed by NDMC for ARR (Aggregate Revenue Requirements) for FY (Financial year 2020-21).
2. Review Petitioner has sought following relief in its prayer:
  - a. Pass Order for stay of the Press Note dated 28.08.2020 and Order dated 28.08.2020 qua the additional allocation ordered from PPCL-III, Bawana, to the Petitioner till the disposal of the present titled Review Petition.

b. Allow this review of the aspect mentioned above and de-allocate the additional power allocated to the petitioner vide Press Note dated 28.08.2020 for the period 01.09.2020 to 31.03.2021, with consequent directions to the SLDC/Respondent No. 2 to review/withdraw letter dated 31.08.2020.

3. Review Petitioner submitted the following:

- a. The review petitioner has filed the instant review petition seeking review of decision of the Commission in the Press Note regarding the increase in power allocation from Respondent No. 3 to review petitioner from 9.12% to 19.12%, that is a total of 10 percent increase was re-allocated to the review petitioner, with effect from 01.09.2020.
- b. That the Respondent No. 2 vide letter dated 31.08.2020 has increased the power allocation from respondent no. 3 to review petitioner with effect from 01.09.2020, in compliance of the Commission's Press Note.
- c. This re-allocation has been grossly erroneous and has overburdened the Petitioner with additional 10% power without any just and reasonable, intelligible criteria for affixing the additional power on a public body causing loss to the public exchequer. This is in negation and conflict with the specific requirements stated by the petitioner in its petition, which was supported by exhaustive data. The said impugned Press Note had also recorded that due to outbreak of Covid, the public hearing was cancelled and considering the impact of Covid -19 on the utilities in their ARR for FY 2020-21 additional information was submitted. The revised allocation takes effect on 01.09.2020. Following instructions were issued which have necessitated the Review Petitioner to file the Present Review Petition:

"4) the Commission has revised the allocation of power from PPS-III, Bawana as per Regulation 121(4) of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 w.e.f. 00:00 Hrs 1stSept 2020 till 00:00 Hrs 31stMarch 2021, based on the following reasons:

(a) *Bridging the gap between Average Power Purchase Cost of the Power Portfolio allocated & Average Revenue due to difference consumer mix of all Distribution Licensees.*

(b) *NDMC request for approval of power requirement to the tune of 142 MW from Teesta-III, which has not been materialized till date, the fact that the 125 MW of allocation of power from Badarpur Thermal Power Station (BTPS) has been discontinued to NDMC due to closure of BTPS and to avoid shedding in their VIP areas serving critical loads."*

- d. That one of the reason for such high re-allocation of power to the petitioner given by the Commission was that the Petitioner's request for approval of power requirement to the tune of 142 MW from Teesta-III, has not materialised till date. It is respectfully submitted that approval of draft Power Purchase Agreement 130 MW Hydro Power from Teesta-III, HEP could not be finalised as the rate offered was initially not in accordance with MOM dated 16.08.2017. However, after negotiations, Teesta Urja Limited (TUL) has revised the tariff to Rs 3.96 per kWh for sale of 142 MW Hydro Power to Petitioner. The petitioner/NDMC vide its letter dated 07.09.2020 had duly informed the Commission of the said development on procurement of 142 MW Hydro Power from 1200MW Teesta-III HEP on medium terms basis, wherein TUL has revised the tariff to Rs 3.96 per kWh.
- e. Additional-allocation done without consent of petitioner without any reasonable criterial causing surplus power allocation as well as high power purchase cost of long term allocation.
- f. The said additional re-allocation was grossly erroneous and shall overburden the review petitioner with additional 10% power without any just and reasonable, intelligible criteria for affixing the additional power on a public body causing loss to the public exchequer. The Petitioner shall suffer loss more than INR 8.77 crore if the said re-allocation is not set-aside/revised as per demand and supply ratio proposed by the Petitioner in its Petition No. 7 of 2020 thereby resulting in loss to the Public.
- g. The Commission in its Press Note has provided that the re-allocation of power has been done as per Regulation 121(4) of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017, which is for the purpose of adjustment of gap between Power Purchase Cost and average revenue.
- h. That the said re-allocation of additional power from respondent No. 3 will result in a huge increase of average power purchase cost of NDMC. The average purchase cost of NDMC from long term allocation is very high in comparison to average long term power purchase cost of other Delhi DISCOM's.

#### **Commission Analysis**

4. Section 94 of the Electricity Act, 2003 provides the power of the Commission for reviewing its decision, directions and orders and is reproduced below:

*“ (1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under the Act, have the same powers as are vested in a civil court under the Code of Civil Procedure 1908 (5 of 1908) in respect of the following matters, namely:-*

- a. Summoning and enforcing the attendance of any person and examining him on oath;
- b. Discovery and production of any document or other material object producible as evidence'
- c. Receiving evidence on affidavits;
- d. Requisitioning of any public record;
- e. Issuing commission for the examination of witnesses;
- f. Reviewing its decisions, directions and orders
- g. Any other matter which may be prescribed.

(2) The Appropriate Commission shall have the powers to pass such interim order in any proceedings, hearing or matter before the Appropriate Commission as that Commission may consider appropriate.

(3) The Appropriate Commission may authorise any person, as it deems fit, to represent the interest of the consumers in the proceedings before it."

5. The right to review has been conferred by Section 114 of Civil Procedure Code, 1908. The limitation and conditions are provided under Order 47, Rule 1 of Civil Procedure Code, 1908.

The Order 47, Rule (1) of Code is given 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) .....*

*(c) ....., 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."*

6. In this regard the Hon'ble Supreme Court of India in Lily Thomas Vs Union of India & Ors on 5th April 2000 held the following:

*"56. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be*

*exercised within the limits of the statute dealing with the exercise of power.  
The review cannot be treated an appeal in disguise. .... ."*

7. A careful perusal of the ground raised by the review petitioner, seeking review of the order, only indicates that the review petitioner seeks to reargue the matter on merits by raising many contentions already raised at the time of hearing of tariff petition, under the guise of review petition. Needless to say, that scope of review is different from scope of appeal. Therefore, the grounds raised in the review petition do not meet the statutory requirement of maintaining the review petition.
8. In view of the above, this review petition is not maintainable. Hence, the review petition fails and is dismissed accordingly.
9. Ordered accordingly.

**Sd/-  
(Dr A.K. Ambasht)  
Member**

**Sd/-  
(Justice S S Chauhan)  
Chairperson**