



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

No. F. 11(1000)/DERC/2013-14/

Petition No. 26/2013

In the matter of: **Application seeking issuance of appropriate directives from the Hon'ble Commission in relation to demand raised by IPGCL seeking payment of income tax paid by it for the FY 2011-12 and for issuance of directions allowing liberty to the Applicant to set-off the amount paid in excess from subsequent bills.**

North Municipal Corporation of Delhi
Through its Commissioner
Under Ground Car Parking
Ashaf Ali Road
New Delhi 110 002

....Petitioner

Vs.

Tata Power Delhi Distribution Limited
Through its Managing Director
Grid Sub-Station Building,
Hudson Lines, Kingsway Camp,
Delhi 110 009

BSES Rajdhani Power Limited
Through its CEO
BSES Bhawan, Nehru Place,
New Delhi-110 019

BSES Yamuna Power Limited
Through its CEO
Shakti Kiran Building,
Karkardooma Delhi

.....Respondent

Coram:

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

Appearance:

1. Mr. B.P. Aggarwal, Advocate NMCD
2. Mr. Ujjwal Kr. Jha, Advocate, NMCD
3. Mr. B.N. Prasanna, NMCD
4. Mr. Ajay Kapoor, CFO, TPDDL
5. Mr. Anurag Bansal, TPDDL
6. Mr. Mithun Chakkraborty, Sr. Manager,
7. Mr. R.K. Singh

ORDER

(Date of Hearing: 25.06.2013)

(Date of Order: 03.07.2013)

1. This Review Petition has been filed under the provision of section 94(1)(f) of the Electricity Act, 2003, by North Municipal Corporation of Delhi (North MCD), hereinafter called the Petitioner, against the Commission's Tariff Order dated 26.06.2012/13.07.2013 for FY 2012-13.

2. The Petitioner sought revision of the impugned tariff order FY 2012-13 for domestic tariff for public light/street light on the same pattern as charged for dispensary/Hospitals/Public Libraries/School/College/ Working Women's Hostel/ Orphanage/ Charitable homes run by Corporation or Govt. of NCT of Delhi.
3. Mr. Ujjawal Kr. Jha Counsel for the Petitioner submitted that the core functions of the Petitioner are to provide essential public services to the urban and rural populations, resettlement of colonies etc. Besides the Petitioner has also to perform various functions as per Section 42 and 43 of the Delhi Municipal Corporation Act.
4. Ld. Counsel further submitted that the public light/street light was always considered to be an activity in the interest of the general public and since it is bulk supply therefore it was kept in the domestic category and tariff was charged as for dispensary/ Hospitals/ Public Libraries/ School/ College/ Working Women's Hostel/Orphanage/Charitable homes run by the Corporation or Govt. of NCT of Delhi till FY 2011-12.
5. Ld. Counsel further submitted that the impugned order for FY 2012-13 for public light/street light was made illegally, unreasonably and unfairly without any public hearing.
6. Ld. Counsel further submitted that the rate fixed for street light/public light was maximum for any category i.e. @Rs. 7.25 per unit whereas, the highest slab of domestic category is Rs.6.40 per unit only. It is pertinent to point out that for the street light of the housing societies, domestic tariff is charged but for public light/street light, the higher tariff is charged by creating a separate category which is illegal and amounts to arbitrary exercise of power.
7. Ld. Counsel further submitted that the tariff fixed for public light/street light cannot be treated at par with the commercial places like malls, shopping hub, Multiplexes, Cinema Theatres, Hotels and other commercial entities because the Petitioner never renders the entertainment services as a part of Street lights nor does it make any profit from this activity.
8. Ld. Counsel further submitted that in Tamil Nadu State and other states public light is kept under the tariff head applicable for the State/Central Government meant for the School, colleges, hospitals etc.
9. Ld. Counsel further stated that in the Chhattisgarh State, Traffic signals and lighting of public streets comes under the head Public Utilities and tariff rate for such type of consumers are Rs. 2.85p per unit, whereas in Delhi it was charged at the rate of Rs. 7.25p per unit.

10. The Commission noticed that with the enactment of the Electricity Act, 2003, the State Electricity Regulatory Commissions have been vested with powers for reviewing its own decisions, directions and Orders by virtue of sub-Section 1(f) of Section 94 of the Electricity Act, 2003. The instant 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.
11. In accordance with the provisions under order 47 Rule 1 of the Code of Civil Procedure 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.

Under Order 47, Rule 1, CPC, Order/Judgement may be open to Review, inter-alia, if there is a mistake or an error apparent on the face of the 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 the record, justifying the Court to exercise its power of review under the above said provisions.

12. The Commission observed that an error apparent on the face of the record may not be defined precisely and exhaustively, as there is an element of indefiniteness inherited in term so used and it must be left to the Court to determine judicially, on the basis of the facts of each case. However, an error must be one which speaks of itself and it glares at the face, which renders it difficult to be ignored. The error is not one limited to one of the fact but it also included obvious error of law. A Review Petition has a limited purpose that cannot be allowed to be an appeal in disguise.
13. The Commission further observed that the application for review on the discovery of new evidence should be considered with great caution. The applicant should show that: -
 - (i) That such evidence was available and of undoubtable character.
 - (ii) That it was so material that the absence might cause miscarriage of justice.
 - (iii) That it could not with reasonable care and diligence has 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 judgement and just not merely reopening the case for the sake of it.

"There are definitive limits to the exercise of power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made. It may be

exercised where some mistake or error apparent on the face of the record is found. It may also be exercised on any analogous ground. A Review Petition has a limited purpose that cannot be allowed to be an appeal in disguise."

14. The Commission has examined the relevant provisions of the Act, , Rules and Regulations made there under and the record placed before the Commission. The Commission has also considered the arguments advanced by the Ld. Counsel for the Review Petitioner. The Commission is of the considered view that the Petitioner has not been able to make out a case for review of the impugned order dt. 26.06.2012 for Street Light/Public light. Further, the Petitioner has not been able to show that there is any error apparent on the face of the record which would require re-consideration of the impugned order by the Commission.
15. Since the Review Petition does not meet the criteria for entertaining such a petition, it is liable to be dismissed at the admission stage itself. The Commission orders accordingly.
16. The review Petition is dismissed.

Sd/-
(J. P. Singh)
Member

Sd/-
(Shyam Wadhera)
Member

Sd/-
(P. D. Sudhakar)
Chairman