



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

No. F. 11(1008)/DERC/2013-14/

**Review Petition No. 29/2013**

**In the matter of:**      **Petition for true-up for FY 2010-11, Review and provisional True-up for FY 2011-12 and MYT Petition for distribution (Wheeling and Retail supply) Business for FY 2012-13 to FY 2014-15 & Order dated 13/07/2012 passed by this Commission in the subject matter filed by SDMC.**

South Delhi Municipal Corporation,  
Dr. S.P.M. Civic Centre,  
J.L.N. Marg,  
New Delhi 110 002

....Petitioner

Vs.

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

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

.....Respondent

**Coram:**

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

**Appearance:**

1. Mr. Sanjiv Sagar, Adv. SDMC
2. Mr. Rahul Malhotra, Adv. TPDDL
3. Mr. Vikas Jain, E.E. (Electrical)
4. Mr. A.Z. Beg, A.E. (Electrical)

**ORDER**

(Date of Hearing: 27.08.2013)  
(Date of Order: 09.09.2013)

1. This Review Petition has been filed under the provisions of section 94(1)(f) of the Electricity Act, 2003, by South Delhi Municipal Corporation, hereinafter called the Petitioner, against the Commission's Tariff Order dated 13.07.2012 for FY 2012-13.
2. The Petitioner sought review of the impugned order dated 13.07.2012 specifically with respect to tariff for Street Lights and light in Public Parks.

3. Mr. Sanjiv Sagar, Ld. Counsel for the review petitioner submitted that in keeping with the principle of promoting welfare of the people of Delhi therefore, the tariff for running the Dispensary/Hospitals/Public Libraries/School/College/Working Women's Hostel/Orphanage/ Charitable homes run by the South Delhi Municipal Corporation is being charged under category of domestic tariff.
4. Ld. Counsel further submitted that the provision of public light/street light also fell in the category of a public good and is an activity in the interest of general public and since it is bulk supply, thus should also be kept in the domestic category.
5. 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 public lighting is an essential service for the citizens and the corporation does not make any profit from this activity.
6. Ld. Counsel further submitted that the tariff for the street lights and lights in public parks maintained by the review petitioner was fixed without obtaining comments/objections from the review petitioner, therefore, the impugned order for public street light and lights in public parks is not only illegal but is also arbitrary and will adversely affect shall cause loss to the public finances since the review petitioner is dependent on Delhi Government for grant- in-aid.
7. Ld. Counsel further submitted that even commercial establishments like Delhi International Airport Limited and Northern Railway are paying less tariff in comparison to the tariff charged from the review petitioner.
8. The Ld. Counsel further submitted that during the year 2011-12 the tariff charged for street light and lights in public parks was 560 paisa per unit which was even 10 paisa per unit lesser than the tariff charged by some domestic consumers. However, as per the impugned order of 13.07.2012, the tariff proposed to be charged from the review petitioner for street lights and lights in public parks is 725 paisa per unit which is higher than the charge of 640 paisa per unit for domestic user and 675 paisa per unit for DAIL as well as 580 paisa per unit for Northern Railway.
9. Ld. Counsel further submitted that in Haryana, West Bengal, Chattisgarh, Uttarakhand, Gujrat and most of the other States the street lights and lights in public parks have been categorised under the head of tariff applicable for the "Public Utility Services".
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 the 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 facts 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 such 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 judgment 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. Ld. Counsel argued in depth to convince the Commission to reduce the tariff fixed for street lights and lights in public parks in the impugned order. However, Commission is not convinced with the pleas raised by the Ld. Counsel. 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. 13.07.2012 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 basic criteria for entertaining such a review petition, it is liable to be dismissed at the admission stage itself. The Commission orders accordingly.
16. The review Petition is dismissed.

(J. P. Singh)  
MEMBER

(Shyam Wadhera)  
MEMBER

(P. D. Sudhakar)  
CHAIRPERSON