



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

No. F. 11(1145)/DERC/2014-15/C.F.4444

Petition No. 46/2014

In the matter of: **Application for Reconsideration/ modification/ review/ withdrawal/ clarification of directions passed by Delhi Electricity Regulatory Commission vide order dated 23.07.2014 on ARR Petition filed by TPDDL for 2014-15**

DVB Engineers Association (Recognised)
Through : its General Secretary'
D-3, Vikas Puri,
New Delhi 110 018

....Petitioner

Petition No. 47/2014

In the matter of: **Application for Reconsideration/ modification/ review/ withdrawal/ clarification of directions passed by Delhi Electricity Regulatory Commission vide order dated 23.07.2014 on ARR Petition filed by TPDDL for 2014-15**

Delhi State Electricity Workers Union,
Through : its General Secretary
L-2, Main Road, Brahm Puri,
Delhi 110 094

....Petitioner

Coram:

Sh. P. D. Sudhakar, Chairperson,
Sh. J. P. Singh, Member_&
Sh. B.P. Singh, Member

Appearance:

1. Mr. V.K. Malhotra
2. Mr. Kuldeep Kumar
3. Mr. R.S. Bisht
4. Mr. Gurjeet Singh

ORDER

(Date of Hearing: 09.09.2014)
(Date of Order 30.10.2014)

1. DVB Engineers Association (Recognised) & Delhi State Electricity Workers Union filed Review Petition No. 46/2014, & 47/2014. The review petitioners have raised identical issues. The Commission therefore, heard both the petitions together and passed a common order in these Review Petitions.
2. The review petitioners have also filed an interim application (I.A) for exemption of fees. The Commission accepted the request of review petitioners for exemption of fees. The Commission has exempted review petitioners from payment of fee in public interest.

3. The review Petitioner sought review on the following issues:
- (i) The Commission may initiate proceedings for framing Regulations under the Provisions of Reforms Act, 2000 and the Electricity Act, 2003 for payment of pension and terminal benefits by the pension Trust, established by GoNCTD for the employees and pensioners of erstwhile DVB, through ARR of TPDDL and the successor utilities.
 - (ii) The factual error in determining share of TPDDL & other distribution utilities out of payment of Rs. 470 Cr. which comes to Rs. 455.90 cr. may be reviewed for necessary correction.

ISSUE NO. 1

4. Review Petitioner submitted that Commission may initiate proceedings for framing Regulations under the Provisions of Reforms Act, 2000 and the Electricity Act, 2003 for payment of pension and terminal benefits by the pension Trust, established by GoNCTD for the employees and pensioners of erstwhile DVB, through ARR of TPDDL and the successor utilities.
5. Review Petitioner further submitted that Commission is empowered u/S 61(1) of Reform Act, 2000 to make Regulations consistent with Electricity Act, 2003 and rules made there under.
6. Section 62 of the Reform Act, 2000 provides that every Regulation made by the Commission under this Act shall be laid as soon as may be after it is made, before the house of Legislative Assembly of NCT of Delhi.
7. Review Petitioner further submitted that Reforms Act, 2000 have been saved u/S 185(3) of the Electricity Act, 2003 and also up held by Appellate Tribunal for Electricity in IA No. 127 of 2013 in DFR No. 2547 of 2012 in the matter of TPDDL vs. DERC. The relevant extract of the said order dated 03.05.2013 are mentioned as under:-

Para 40 *It cannot be disputed that the Delhi Commission has got the powers to frame the Regulations under the Delhi Electricity Reforms Act, 2000, prior to Act, 2003.*

Para 41 *Under Section 61 of the Delhi Electricity Reforms Act, 2000, powers has been conferred on Delhi Commission to make Regulations. These Regulations framed by the State Commission have to be placed before the State Legislature u/S 62 of the Act, 2000.*

Para 42 *As indicated above, these Regulations in respect of which the violation has been complained of, has been validly framed under the Act, 2000. It is also be noted that Section 185 of the Act, 2000 which relates to the Repeal and Savings provides that various earlier Act, including Delhi*

Reforms Act, 2000 have been saved u/S 185(3) of 2003 Act the provisions of Delhi Reforms Act, will be applicable to Delhi.

8. The review petitioner further submitted that ATE's Order dated 24.03.2014 in Appeal No. 238 of 2013 in the matter of Mahendra Gupta and Ors. Vs. DERC, of the APTEL, relied upon by the Hon'ble Commission is distinguishable and has no application in the matter of framing Regulations for payment pension and terminal benefits by the pension trust in the ARR of TPDDL and other Discoms. This matter is related to individual grievance of some employees relating to grant of pension and terminal benefits by the Pension Trust.
9. The review petitioner further submitted that whereas the issue before the Commission for adjudication in the ARR Petition filed by TPDDL and other distribution utilities for FY 2014-15 was related to discharge of Statutory obligation by the Commission for framing Regulation for funding pension trust liability by the successor utilities of DVB as mandated under the Transfer Scheme.
10. The review petitioner further submitted that the Commission is mandated to make Regulations for Terms & Conditions allowing life time Pension and Terminal Benefits liability of personnel of DVB (retired or to retire) and this should be allowed in the ARR petition of the utilities, under the provisions of Reforms Act and the Electricity Act.
11. The review petitioner further submitted that the Reforms Act was enacted by the GoNCTD focusing on the scheduled rehabilitation structuring of the Board. The said Act clearly provided safeguards qua the employees and the pensioners.

ISSUE NO. 2

12. Review Petitioner submitted that the factual error in determining share of TPDDL & other distribution utilities out of payment of Rs. 470 Crore which comes to Rs. 455.90 may be reviewed for necessary correction.

ANALYSIS AND ORDER

13. The Commission has considered the relevant provisions of the Act and the Rules and Regulations made thereunder, the detailed submissions made by the review petitioner and the entire record placed before it.
14. The Commission noticed that u/S 94(f) of the Electricity Act, 2003 it is empowered to review its decisions, directions and orders.
15. Further order 47 Rule 1 of Civil Procedure Code provides that

1. 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 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.

16. The above mentioned provisions of Civil Procedure Code mandates that 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.

17. The Commission has examined the contentions raised by the review petitioner in depth and is of the considered view that none of the conditions stipulated for review are satisfied and thus the contentions raised by the review petitioner are not legally sustainable, are devoid of any merits and therefore the review petition needs to be dismissed at the admission stage itself.

18. In view of the above the Commission is of the considered view that review petition lacks merit for admission; therefore review petition is dismissed at the admission stage itself.

19. Ordered accordingly.

Sd/-
(B. P. Singh)
Member

Sd/-
(J.P. Singh)
Member

Sd/-
(P. D. Sudhakar)
Chairperson