

**Delhi Electricity Regulatory Commission**  
**Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 110 017**

Ref.F.11(526)/DERC/2009-10/C.F.No.2242/5310

**Petition No. 17 / 2009**

**In the matter of:** Petition under Section 94 (1) of the Electricity Act, 2003 regarding review of the Order of the Delhi Electricity Regulatory Commission dated 20.10.2009

BSES Rajdhani Power Limited  
Through its Vice President, Business  
BSES Bhawan,  
Nehru Place  
New Delhi-110019

**....Petitioner**

**Coram:**

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

**ORDER (REVIEW)**

(Date of Order: 10.01.2013)

1. This petition has been filed by the BSES Rajdhani Power Limited through its Vice President Y M Saxena for reviewing the Commission's order dated 20.10.2009, passed in above matter under Section 142 of the Electricity Act, 2003.

2. The Commission vide its order dated 20.10.2009 had found the petitioner guilty of not acting with due diligence and resorting to excessive overdrawal from the grid and thereby imposed a penalty of Rs.25,000/- for each violation i.e 672 violations, total penalty amounting to Rs.1,68,00,000/- under the Act.

3. The Petitioner vide the present review petition has submitted the following grounds for review.

- (i) The Impugned Order is patently illegal since it fails to consider that this Hon'ble Commission does not have the jurisdiction to

- initiate action against a DISCOM for non-compliance with the provisions of the IEGC.
- (ii) The impugned order is patently illegal since it fails to consider that this Hon'ble Commission does not have the jurisdiction to initiate action against the DISCOM for non-compliance with the provisions of the DGC.
- (iii) The Impugned order is erroneous on the face of the record since it imposes a penalty on the Petitioner without establishing any non-compliance with the directions from the SLDC by the Petitioner.
- (iv) The Impugned order is patently illegal since the same goes beyond the scope of the investigation as envisaged in the SCN issued to the Petitioner.
- (v) The Impugned order needs reconsideration since a final order on the issue of unprecedented load shedding has been passed by this Hon'ble Commission without giving sufficient opportunity of hearing to the Petitioner.
- (vi) Objective sought to be achieved by the SCN are not met by the Impugned Order thereby making the Impugned order patently illegal.
- (vii) Action solely against the Petitioner for grid violation is discriminatory and an error apparent on the face of the record.
- (viii) The Impugned Order is erroneous, being an error apparent on the face of the record since this Hon'ble Commission has held the Petitioner guilty for unprecedented load shedding without giving any opportunity of hearing to the Petitioner.
- (ix) The Impugned order fails to consider that the Petitioner acted with due diligence.
- (x) The directions given by the Hon'ble Commission to the Petitioner are bad in law as the same cannot be given in a proceeding under Section 24 (1) of the Act.

**4.** While dealing with an application for a review of an Order, it is very necessary to proceed with utmost caution as the powers of review are to be exercised in limited circumstances, since as a general Rule, a judgment once signed and pronounced, cannot be altered. Therefore, the Orders are not generally interfered with unless there are circumstances as defined under the law, which make it necessary for a Court to alter or modify or reverse its original

judgment. The application and the scope of the review of an Order are circumscribed under Order 47, Rule 1, of Code of Civil Procedure. The power of review is not inherently vested with a Court or a Tribunal or a Commission. The right and power of review does not exist unless conferred by law expressly or by necessary implication.

5. With the enactment of the Electricity Act, 2003, the State Electricity Regulatory Commissions have been vested with powers for reviewing their decisions, 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 a review of its decisions, 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.

6. 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 power, under the aforesaid provision are re-produced as below :-

7. The relevant provision of law (Order 47 Rule 1 of Civil Procedure Code) is reproduced as under:

**Order 47 Rule 1 CPC.**

**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.

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.** Under Order 47, Rule 1, CPC, Order/Judgment may be opened to review, inter-alia, if there is a mistake or an error apparent on the face of record. An error which is not self-evident has to be detected by process of reasoning cannot be said to be an error apparent on the face of record, justifying the Court to exercise its power of review under the above said provisions.

**10.** The application for review on the discovery of new evidence should be considered with great caution. The applicant should show that :-

- a. That such evidence was available and of undoubtable character.
- b. That it was so material that its absence might cause miscarriage of justice.
- c. That it could not be taken in to consideration with reasonable care and diligence as it has not been brought forward in the notice of court at the time of decree/order. It is a well settled principle of law 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.

**11.** Further also in the case of Parsion Devi Vs. Sumitri Devi the Supreme Court has held that;

*"A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition, through different Counsel, of old and overruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient. The very strict need for compliance with these factors is the rationale behind the insistence of Counsel's certificate which should not be a routine affair or a habitual step. It is neither fairness to the Court which decided nor awareness of the precious public time lost what with a huge backlog of dockets waiting in the queue for disposal, for counsel to issue easy certificates for entertainment of review and fight over again the same battle which has been fought and lost (The review) stage is not a virgin ground but review of an earlier order which has the normal feature of finality."*

**12.** Keeping in view the statutory provisions and the pronouncements of the Supreme Court of India, the scope of review has been limited into the following words :-

- (i) That the power of review can be exercised only within the domain prescribed under Order 47, Rule 1, for the rectification of an error patent and glaring on the face which would warrant reconsideration of the judgment/order so pronounced.
- (ii) Where there is nothing to contest that the error is so convincingly parched in the order that at the face of the record it would be unacceptable to continue.
- (iii) The error should be self-evident.
- (iv) Review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected.

**13.** In view of the above narrations, the grounds taken by the petitioner for review of order dated 20.10.2009 passed by the Commissions and our observations are as under:

**(i) Petitioner's submission:**

*The Impugned Order is patently illegal since it fails to consider that this Hon'ble Commission does not have the jurisdiction to initiate action against a DISCOM for non-compliance with the provisions of the IEGC.*

It is observed that the Commission had issued a show cause on 06.08.2009 to BRPL for explaining the reasons for the unprecedented load shedding as also to show cause as to why action be not taken against them in the following manner.

- a) As per the provision of Section 142 of the Electricity Act for failure to maintain grid discipline and indulging in persistent overdrawal from the grid in violation of IEGC/DGC provisions;

In view of the said show cause notice (dated 06.08.2009), it is clear that the charges were framed against the petitioner as per provision of Section 142 of the Electricity

Act for failure to maintain grid discipline and indulging in persistent overdrawal from the grid in violation of IEGC/DGC provisions.

It is also observed that the Commission in its Impugned Order has already given findings on the above issue that whenever there is any violation of the provisions of this Act or the Rules or Regulations made thereunder or any direction issued by the Commission, Section 142 gives jurisdiction to the Commission to impose penalty after giving such person an opportunity of being heard in the matter (Para 9 of the Impugned Order).

The Commission has also clarified that the violation of grid discipline, has to be seen in the light of various provisions of Delhi Grid Code. The Delhi Grid Code (State Grid Code) specified by the Commission in exercise of powers under Section 181 of the Electricity Act, 2003.

Hence, there is no merit in the plea taken by the petitioner that the Commission does not have the jurisdiction to initiate action against a DISCOM for non-compliance with the provisions of the IEGC/DGC.

**(ii) Petitioner's submission:**

*The impugned order is patently illegal since it fails to consider that this Hon'ble Commission does not have the jurisdiction to initiate action against the DISCOM for non-compliance with the provisions of the DGC.*

On this issue, it is observed that the Commission has already given its findings in the Impugned Order at para No.9 as also referred above {(para 13 (i))} that the Commission have jurisdiction to initiate action against the DISCOM for non-compliance with the provisions of the DGC and there is nothing new on record which suggests that the Commission needs to review its order on this point.

In the instant case, the petitioner has been found guilty of violation of the provision of Delhi Grid Code. Hence, the plea taken by the petitioner does not have any substance.

**(iii) Petitioner's submission:**

*The Impugned order is erroneous on the face of the record since it imposes a penalty on the Petitioner without establishing any non-compliance with the directions from the SLDC by the Petitioner.*

It is observed that the above point has already been decided by the Commission in its Impugned Order at para No.9 (v) (vi) & (x) wherein SLDC vide its numerous messages has been asking all utilities including BRPL to restrict their drawal whenever the frequency was below 49.5/49.2 hz. The Commission has also referred to the SLDC's reply dated 22.09.2009 wherein the SLDC has been continuously reminding the utilities of the precarious position of the grid through its various messages addressed to them.

Therefore, the plea taken by the petitioner that the Commission has failed to establish non-compliance with the directions issued by SLDC does not have any substance.

**(iv) Petitioner's submission:**

*The Impugned order is patently illegal since the same goes beyond the scope of the investigation as envisaged in the SCN issued to the Petitioner.*

It is observed that the Commission had issued a show cause on 06.08.2009 to BRPL for explaining the reasons for the unprecedented load shedding as also to show cause as to why action be not taken against them in the following manner.

- a) As per the provision of Section 142 of the Electricity Act for failure to maintain Grid discipline and indulging in persistent overdrawal from the grid in violation of IEGC/DGC provisions;

- b) And Sh. Arun Kanchan, CEO for his failure to exercise due diligence which led to the unprecedented load shedding in the area of BRPL, under Section 149 of the Electricity Act;
- c) As per provisions of Section 24 (1) of the Electricity Act, 2003 for suspension of distribution license.

In view of the said show cause notice (dated 06.08.2009), it is evident that the charges were framed against the petitioner duly mentioning the violation of various provisions of law including failure to maintain grid discipline and indulging in persistent overdrawal from the grid in violation of IEGC/DGC provisions at point (a) above. Hence, there is no merit in the plea taken by the petitioner that the SCN was issued to the Petitioner beyond the scope of the investigation as envisaged in the SCN.

**(v) Petitioner's submission:**

*The Impugned order needs reconsideration by the Commission since a final order on the issue of load shedding has been passed by this Hon'ble Commission without giving sufficient opportunity of hearing to the Petitioner.*

It is observed that the Commission had issued show cause notice on 06.08.2009 wherein one week time was provided to the respondent to file its reply. Again, the Commission issued notice of hearing to the respondent on 17.09.2009 and decided to hold a public hearing on 25.09.2009 and subsequently granted time to file its reply / objections till 29.09.2009 and thereafter the Commission passed the impugned order.

Perusal of the above record shows that sufficient opportunity was given to the Petitioner for representing its case. Hence, the plea taken by the Petitioner that sufficient time was not granted for defending the case does not have any substance.



**(vi) Petitioner's submission:**

*Objective sought to be achieved by the SCN are not met by the Impugned Order thereby making the Impugned order patently illegal.*

On the above issue, the Commission had issued a show cause on 06.08.2009 to BRPL for explaining the reasons for the unprecedented load shedding as also to show cause as to why action be not taken against them in the following manner.

- a) As per the provision of Section 142 of the Electricity Act for failure to maintain Grid discipline and indulging in persistent overdrawal from the grid in violation of IEGC/SGC provisions;
- b) And Sh. Arun Kanchan, CEO for his failure to exercise due diligence which led to the unprecedented load shedding in the area of BRPL, under Section 149 of the Electricity Act;
- c) As per provisions of Section 24 (1) of the Electricity Act, 2003 for suspension of distribution license.

In view of the said show cause notice (dated 06.08.2009), it is clear that the charges were framed against the petitioner duly mentioning the violation of various provisions of law. The Impugned Order contains all the clarifications and justifications holding the petitioner guilty under the Act in terms of the SCN issued. Hence, there is no merit in the plea taken by the petitioner that objective sought to be achieved by the SCN are not met by the Impugned Order thereby making the Impugned Order patently illegal.

**(vii) Petitioner's submission:**

*Action solely against the Petitioner for grid violation is discriminatory and an apparent error on the face of the record.*

It is observed that the Commission has already decided this issue in its Impugned order vide para 9 (xvii) wherein it is stated by the Petitioner that *"there are other distribution licensees of Delhi who have also indulged in Grid violation and overdrawal during the same period and only they are being singled out as per the Show Cause Notice. The Commission held that there is no merit in this argument as Petitioner has to answer for its acts of omission and commission and it is not for them to raise issues that other players in the sector are also indulging in violation of Grid Code. Violation of Grid Code by other DISCOMS in Delhi is a separate issue altogether and the Commission may take appropriate action as and when considered necessary"*. The reasons why for the present, only BRPL is being proceeded against are clearly mentioned in paras 2 & 3 of the Impugned Order.

Hence, the plea taken by the Petitioner that action solely against the Petitioner for grid violation is discriminatory and an error apparent on the face of the record does not have any substance.

**(viii)**

**Petitioner's submission:**

*The Impugned Order is erroneous, being an error apparent on the face of the record since this Hon'ble Commission has held the Petitioner guilty for unprecedented load shedding without giving any opportunity of hearing to the Petitioner.*

It is observed that the Commission had issued show cause notice on 06.08.2009 wherein one week time was provided to the respondent to file its reply. Again, the Commission issued notice of hearing to the respondent on 17.09.2009 and decided to hold a public hearing on 25.09.2009 and subsequently granted time to file its reply / objections till 29.09.2009 and thereafter the Commission passed the impugned order.

Perusal of the above record shows that sufficient opportunity was given to the Petitioner for representing its case. Hence,

the plea taken by the Petitioner that sufficient time have not been granted for defending his case does not have any substance.

**(ix) Petitioner's submission:**

*The Impugned order fails to consider that the Petitioner acted with due diligence.*

It is observed that the Commission has already decided this issue in its Impugned Order dated 20.10.2009. The Commission has held that in the instant case the Petitioner has failed to prove that he acted with due diligence and therefore, the Petitioner and Company (BRPL) was guilty of contravention / non-compliance of the provisions of the Delhi Grid Code and IEGC and directions of the Commission.

The relevant paragraphs of the order are as under:

*“(xxviii) In the light of the above discussions, the Commission holds BRPL guilty of contravention / non-compliance of the provisions of the Delhi Grid Code and IEGC.”*

*“(xxiii) From the above, it is clear that the CEO, BRPL has violated the directions of the Commission and provisions of the Delhi Grid Code. Such violations constitute an offence within the meaning of Section 146 of the Electricity Act, 2003. Therefore, the provisions of Section 149 are attracted. From the facts placed on record, it is obvious that the CEO of BRPL made no effort for curtailment of over drawl during the period in question at frequency below 49.5 hz. Under these circumstances, it cannot be said that non compliance of the grid code was committed by BRPL without the knowledge of its CEO or that the CEO exercised due diligence to ensure compliance of the provisions of the Delhi Grid Code.”*

Hence, the plea taken by the Petitioner that there is an error apparent since the Impugned Order fails to consider that the Company and the Petitioner acted with due diligence does not have any substance.

**(x) Petitioner's submission:**

*The directions given by the Hon'ble Commission to the Petitioner are bad in law as the same cannot be given in a proceeding under Section 24 (1) of the Act.*

It is observed that the Commission has already decided this issue in detail in its Impugned Order dated 20.10.2009 vide para 9 (b). Section 24 (1) of the Electricity Act, 2003 empowers the Commission to suspend licence of the distribution licensee and sale of utility. The relevant section is reproduced as under:

**Section 24 (1) of the Electricity Act, 2003**

***“(Suspension of distribution licence and sale of utility):*** (1) *If at any time the Appropriate Commission is of the opinion that a distribution licensee –*

*(a) has persistently failed to maintain uninterrupted supply of electricity conforming to standards regarding quality of electricity to the consumers; or*

*(b) is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or*

*(c) has persistently defaulted in complying with any direction given by the Appropriate Commission under this Act; or*

*(d) has broken the terms and conditions of licence, and circumstances exist which render it necessary for it in public interest so to do, the Appropriate Commission may, for reasons to be recorded in writing, suspend, for a period not exceeding one year, the licence of the distribution licensee and appoint an Administrator to discharge the functions of the distribution licensee in accordance with the terms and conditions of the licence:*

*Provided that before suspending a licence under this section, the Appropriate Commission shall give a reasonable opportunity to the distribution licensee to make representations against the proposed suspension of license and shall consider the representations, if any, of the distribution licensee.*

*(2) Upon suspension of license under sub-section (1) the utilities of the distribution licensee shall vest in the Administrator for a period not exceeding one year or up to the date on which such utility is sold in accordance with the provisions contained in section 20, whichever is later.*

*(3) The Appropriate Commission shall, within one year of appointment of the Administrator under sub-section (1) either revoke the licence in accordance with the provisions contained in section 19 or revoke suspension of the licence and restore the utility to the distribution licensee whose licence had been suspended, as the case may be.*

*(4) In a case where the Appropriate Commission revokes the licence under sub-section (3), the utility of the distribution licensee shall be sold within a period of one year from the date of revocation of*

*the licence in accordance with the provisions of section 20 and the price after deducting the administrative and other expenses on sale of utilities be remitted to the distribution licensee".*

In the instant order, the Commission has not taken any action against the Petitioner in terms of Section 24(i) of the Electricity Act, 2003 which relate to suspension of license of the Distribution Licensee. The Commission ordered an investigation u/s 128 of the Electricity Act, 2003 by appointing an expert committee for verification of load shedding data from SCADA system with their MIS system maintained separately for the month of June 2009.

**14.** From a perusal of above, it has been observed that the issues raised in this petition have already been considered by the Commission in the Impugned Order and the instant petition is devoid of any of the ingredients mentioned in para 3 above, which can qualify its admissibility for review. No fresh evidence/error apparent on the face of the record have been found by the Commission which can be considered as a reason for miscarriage of justice.

**15.** In the light of the above narration, the Commission has not found any merit for reopening/reviewing of the above impugned order and hence the review petition is dismissed.

**16.** Ordered accordingly.

Sd/-  
(J.P. Singh)  
MEMBER

Sd/-  
(Shyam Wadhera)  
MEMBER

Sd/-  
(P.D. Sudhakar)  
CHAIRPERSON