

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

No. F.11(514)/DERC/2009-10/

**Review Petition No. 12/2009**

**In the matter of :** Application under Section 94(1)(f) of the Electricity Act, 2003 seeking review of the Commission's Order dated 30.07.2009 passed in Petition no. 53/2008.

**AND**

**In the matter of:**

M/s. Global Energy Pvt. Limited  
Through its: **Managing Director**  
GESCO Corporate Centre,  
70, Nehru Place,  
New Delhi-110 019.

**...Applicant/Review Petitioner**

Through:

Sh. Rajiv Yadav, Advocate  
8<sup>th</sup> Floor,  
Le Meridien Commercial Tower  
Raisina Road,  
New Delhi – 110 001.

**Coram:**

**Sh. Berjinder Singh, Chairman, Sh. Shyam Wadhera, Member &  
Sh. Subhash R. Sethi, Member.**

Appearance:

1. Sh. Rajiv Yadav, Counsel for the Applicant.

**ORDER**

(Date of Order: 07.05.2010)

1. M/s. Global Energy Pvt. Ltd. has filed the present Review Petition No. 12/2009 for review of the impugned Order dated 30.07.2009 in Petition No. 53/2008.
2. The Review Petitioner has referred to Section 94 and 185(3) of the Electricity Act, 2003, Section 114 read with Order 47 of the Code of Civil Procedure, 1908 and Regulation 57, 58 and 59 of the DERC Comprehensive (Conduct of Business) Regulations 2001 of the Commission to establish that the Commission has powers to review its Order.

3. According to the Review Petitioner, the Order passed by the Commission suffered from mistakes and errors apparent on the face of record which are required to be corrected.
4. It is important to understand that while dealing with an application for a review of an Order, it is very necessary to process the application with utmost caution as the powers of review are not ordinary powers.
5. The provisions relating to review of an Order constitute an exception to the general Rule to the effect that once a judgement is signed and pronounced, it cannot be altered. Therefore, the Orders are not generally interfered with, till there are circumstances as defined under the law which make it necessary for a Court to alter or modify or reverse its original judgement. 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.
6. 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(e) of Section 94 of the Electricity Act, 2003. The application, made before the Commission, for the 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.
7. The Commission is of the view that the scope of review is more strict and restricted than an appeal. The Court of review has only a limited jurisdiction and limited by the unqualified language of Order 47, Rule 1. The review power, under the aforesaid provision are re-produced as below:-

*“Application for review of judgement – (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 judgement of the Court which passed the decree or made the order.”*

8. The above mentioned provisions of CPC mandate 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.

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 record. An error which is not self-evident and has to be detected by process of reasoning, can hardly 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.

9. 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 :-

- a) 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 judgement/order so pronounced.
- b) 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.
- c) The error should be self-evident.
- d) Review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected.

10. Sh. Rajiv Yadav, Ld. Counsel for the Review Petitioner, contended that application u/S 14 of the Electricity Act, 2003 for grant of Intra-State Trading License within the National Capital Territory of Delhi was filed with the Commission and the said application was accompanied with necessary information and documents as per the DERC (Intra State Electricity Traders) Regulations, 2005.

11. Sh. Yadav, Ld. Counsel, further contended that the Review Petitioner had not published a notice u/S 15(2) of the Electricity Act, 2003 as draft of the said notice was not approved by the Commission. Therefore, no prejudice would be caused to anyone if the application already filed by the Review Petitioner is taken-up for consideration by the Commission. Further, the Review Petitioner undertakes to publish a notice u/S 15(2) of the Electricity Act, 2003 in the name of Global Energy Pvt. Ltd.
12. Sh. Yadav contended that in the impugned Order it is stated that the Counsel for the Applicant was heard at length. However, it is noticed that none of the contentions of the Counsel for the Applicant have been recorded or considered.
13. Sh. Yadav submitted that the Commission has committed an error apparent on the face of the record in its impugned Order by directing the Applicant to file fresh application for grant of Intra State Trading License in view of change of name of the company. The Commission has not considered Section 23(3) of the Company's Act, 1956 which specifically stipulates that a change of name of company shall have no effect on any legal proceedings by or against the company.
14. Sh. Yadav further submitted that the impugned Order has been passed without affording an opportunity of being heard to the Applicant on the issue of maintainability of application on account of change in the name of Applicant from Global Energy Limited to Global Energy Pvt. Ltd. After the intimation of change of name vide its Affidavit dated 08.04.2009, no show-cause notice was issued by the Commission requiring the Applicant to explain why it should not be required to file a fresh application on account of its conversion from a Public Limited Company to a Private Limited Company.
15. Sh. Yadav further submitted that the Commission has not considered the proviso of Section 21 of Company's Act, 1956 which even dispenses with the approval of the Central Government when only change occurring in the name is the deletion or addition of the word private and conversion of the company from a Private to a Public and vice versa.
16. Sh. Yadav further submitted that the Commission in its impugned Order dated 30.07.2009 has not adhered to the consistent practice followed by other Regulatory Commission which allow for a change in the name of applicant/licensee without insisting on the requirement to file a fresh application.

**COMMISSION'S ANALYSIS:**

17. The Commission perused the entire record placed before it. The Commission also examined the relevant provisions of the Electricity Act, 2003 regarding grant of licence and its impugned Order dated 30.07.2009.

18. Section 14 of the Electricity Act, 2003 provides that:

*"The Appropriate Commission may, on an application made to it under section 15, grant a licence to any person—*

- (a) to transmit electricity as a transmission licensee; or*
- (b) to distribute electricity as a distribution licensee; or*
- (c) to undertake trading in electricity as an electricity trader, in any area as may be specified in the licence."*

19. Section 15 of the Electricity Act, 2003 provides that:

*"(1) Every application under section 14 shall be made in such form and in such manner as may be specified by the Appropriate Commission and shall be accompanied by such fee as may be prescribed.*

*(2) Any person who has made an application for grant of a licence shall, within seven days after making such application, publish a notice of his application with such particulars and in such manner as may be specified and a licence shall not be granted—*

- (i) until the objections, if any, received by the Appropriate Commission in response to publication of the application have been considered by it:*

*PROVIDED that no objection shall be so considered unless it is received before the expiration of thirty days from the date of publication of the notice as aforesaid;*

- (ii) until, in the case of an application for a licence for an area including the whole or any part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or of any building or place in the occupation of the Govt. for defence purposes, the Appropriate Commission has ascertained that there is no objection to the grant of the licence on the part of the Central Govt.*

*(5) Before granting a licence under section 14, the Appropriate Commission shall—*

- (a) publish a notice in two such daily newspapers, as that Commission may consider necessary, stating the name and address of the person to whom it proposes to issue the licence;*
- (b) consider all suggestions or objections and the recommendations, if any, of the Central Transmission Utility or the State Transmission Utility, as the case may be.*

*(6) Where a person makes an application under sub-section (1) of section 14 to act as a licensee, the Appropriate Commission shall, as far as practicable, within ninety days after receipt of such application,—*

- (a) issue a licence subject to the provisions of this Act and the rules and regulations made thereunder; or*
- (b) reject the application for reasons to be recorded in writing if such application does not conform to the provisions of this Act or the rules*

*and regulations made thereunder or the provisions of any other law for the time being in force:*

*PROVIDED that no application shall be rejected unless the applicant has been given an opportunity of being heard."*

20. The Applicant had filed an application for grant of Intra State Trading License with the Commission on 23.10.2007. The Commission directed the Applicant to put-up a draft of a notice of his application to be published in the newspapers in compliance with Section 15(2) of the Electricity Act, 2003 to the Commission for its approval. However, it is noticed that inspite of several opportunities provided to the Applicant, the same was not put-up for a long time. Further, the Commission was informed about the change of the Applicant's name from Global Energy Limited to Global Energy Pvt. Ltd. after a long gap from the date of filing the application for grant of Intra State Trading License vide Affidavit dated 08.04.2009.
21. Keeping in view the delay in publication of his application as required under Section 15(2) of the Electricity Act, 2003 and subsequent change of name of the Applicant from Global Energy Limited to Global Energy Pvt. Ltd., the commission after hearing the Counsel for Applicant on 23.07.2009, passed the impugned Order dated 30.07.2009. The Commission in its impugned Order dated 30.07.2009 directed the Applicant to submit an application for grant of Intra State Trading License afresh under its new name alongwith its latest details regarding net-worth, turn-over etc. as per DERC (Intra State Electricity Traders) Regulations, 2005 and Electricity Act, 2003. The Applicant was further directed to submit a draft of notice and its application to be published in the newspaper in compliance of the provisions of Section 15(2) of the Electricity Act, 2003 for Commission's approval. The Commission has also granted liberty to file afresh the application for grant of Intra State Trading License without any fee as the fee submitted earlier will be considered as fee for fresh application.
22. The Commission has considered the contentions raised by the Review Petitioner in its Review Petition and has not found any error on the face of the record. The Commission is of the view that Review Petitioner could not make-out a case for review. Therefore, the Review Petitioner is held to have no case for review of the impugned Order. Thus, the Review Petition is dismissed.
23. Ordered accordingly.

Sd/-  
(Subhash R. Sethi)  
MEMBER

Sd/-  
(Shyam Wadhera)  
MEMBER

Sd/-  
(Berjinder Singh)  
CHAIRMAN