

# DELHI ELECTRICITY REGULATORY COMMISSION

Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi- 110017.

## **Review Application No. 39/2006**

**In the matter of** : Application under Section 94(1)(e) of Electricity Act, 2003  
for Review of Order dated 18.11.2005. Petition No. 13/2005.

**In the matter of:**

Jan Sehyog Manch (Regd.)  
34/1, East Punjabi Bagh,  
New Delhi-110026.

Through its President Sh. Mohan Kumar Garg.

**Petitioner**

Through: Sh. Laliet Kumar, Advocate  
50, Tehsil Building,  
Tis Hazari Courts, Delhi-54.

## **Versus**

M/s North Delhi Power Ltd.  
Through its : **Managing Director**  
Hudson Lines, Kingsway Camp,  
Delhi – 110009.

**Respondent No. 1.**

The Special Secretary (Power),  
Government of National Capital Territory of Delhi,  
8<sup>th</sup> Level, B-Wing, Delhi Secretariat,  
I.P. Estate,  
New Delhi-110002.

**Respondent No. 2.**

BSES Rajdhani Power Ltd.,  
Through its: **CEO**  
BSES Bhawan, Nehru Place,  
New Delhi – 19.

**Respondent No. 3.**

BSES Yamuna Power Ltd.,  
Through its; **CEO**  
Shakti Kiran Building,  
Karkardooma,  
New Delhi – 92.

**Respondent No. 4.**

Shri Ram Nauj Tyagi  
House No. 31, Village & P.O. Burari,  
K. No. 414-121589,  
Delhi-110084

**Respondent No. 5.**

Shri Jagvir Rana  
C-10, Sai Apartments, Sector –13,  
Rohini, Delhi-110085.

**Respondent No. 6.**

**Coram :**

**Sh. Berjinder Singh, Chairman, Sh. K. Venugopal, Member &  
Sh. R. Krishnamoorthy, Member.**

**Appearance :**

1. Sh. Laliet Kumar, Advocate on behalf of Petitioner.
2. Sh. Amit Kapoor, Advocate for Respondent No. 1.
3. Sh. Anurag Bansal, Executive, Legal, NDPL.
4. Sh. Bibhu Biswal, Manager, NDPL.
5. Sh. Rajnish, Advocate for Respondent.
6. Sh. Ram Nauj Tyagi, Respondent No. 5.

**ORDER**

(Date of Hearing: 28.9.2006)  
(Date of Order: 01.02.2007)

1. An application under Section 94(1)(e) of the Electricity Act, 2003 for review of Commission's impugned Order dated 18.11.2005 is filed alongwith an application under 151 CPC for stay/extension of stay of the impugned Order dated 18.11.2005, as per the order of the Hon'ble High Court of Delhi dated 6.7.2006 passed in Writ Petition (Civil) No. 8378/2006. The Hon'ble High Court of Delhi directed that "it is open to the Petitioner to choose its appropriate remedy by either preferring an appeal or a review. In either case the Petitioner shall approach the appropriate Forum i.e. Commission or the Appellate Tribunal within 3 weeks from today. The said Forum shall dispose of such proceedings as expeditiously as possible and preferably within 4 weeks of the presentation of the review/appeal."

2. The Commission heard the Counsels for both the parties.

3. Sh.Laliet Kumar, the Learned Counsel for the Review Petitioner, (Jan Sehyog Manch (Regd.)) during the hearing as well as in his written submissions, pointed out that the impugned Order passed by the Commission on 18.11.2005 is bad in law and was not in accordance with the provisions of law and, therefore, called for withdrawal by the Commission. He has further submitted the following :-

- (a) The petition filed by the Licensee, NDPL, was under Section 11 of the Delhi Electricity Reform Act, 2000 and that the Commission has no powers to adjudicate the tariff petition under Section 11 of DERA, 2000.
- (b) The Commission, while passing the Order on the petition, had followed the mandate of the Electricity Act, 2003 and the judgements on the determination of tariff. However, the applicable provisions of the Electricity Act, 2003 are Section 61 and 62 of the Act and Section 28 of the Delhi Electricity Reform Act, 2000. Further, Section 28(10) of Delhi Electricity Reform Act defines tariff as " a Schedule of standard prices or charges for specified services which are applicable to all such

specified services provided to the type or types of customers specified in the tariff.”

- (c) The proceedings mean and include proceedings of all nature and the Commission may hold the proceedings in the discharge of its functions under the Act. Chapter IV, of the DERC Comprehensive (Conduct of Business) Regulations, 2001 deals with the formulation of tariff. It is submitted that while passing the Order on 18.11.2005, the Commission has not followed the procedure framed under the Act for conducting the proceedings as there is no participation of the stakeholders in determination of the principle as had been done by the Commission in its impugned Order dated 18.11.2005. It is further submitted that the Commission has neither followed the Regulation 8 by inviting the Consumers Association in determining the principles in the said petition nor had followed the procedure under Regulation 15(xi) and 16. Further, the proceedings have not been conducted in accordance with the Regulations 53, 54 and 55 of the DERC Comprehensive (Conduct of Business) Regulations, 2001.
- (d) That the Schedule of miscellaneous charges was framed by the Commission in June 2003. It came into effect on 16.6.2003, subsequent to the Electricity Act, 2003 and the privatisation of Delhi Vidyut Board. There was no change in circumstances after the miscellaneous charges became effective on 16.6.2003 either in the statute or in the government policies. The power to frame the Regulations exercised by the Commission continue to govern the field as on today in the same manner as it was available to the Commission at the time of finalising the Schedule of Miscellaneous Charges on 16.6.2003. Therefore, the Commission was wrong in invoking its jurisdiction in modifying/amending the Schedule of Miscellaneous Charges in the said petition filed under Section 11 of DERA, 2000. This has to be under the substantive provision either in Section 61 or under Section 181 of the Electricity Act, 2003.
- (e) That there are no Regulations framed by the Commission which require the supply of electricity to the agricultural consumers on the basis of HVDS. Therefore, the consumer is not liable to pay any charges, which may be incurred by the Licensee for laying down the HVDS network.
- (f) That as per the submissions made by the Govt. of NCT, Delhi all the rural areas are electrified through the LT network. Therefore, there is

neither a commercial compulsion nor a policy compulsion to replace the LT network with the HT network and to include the expenses of replacement in the ARR, thus, burdening the ordinary consumer for which he is not getting any electricity supply. There is no doubt that neither the domestic consumer nor the agricultural consumer of Delhi will get any specific benefit for the additional charges which they may have to pay on account of providing the electricity to the agricultural consumers on new HVDS system in place of existing LT network.

- (g) That in accordance with the Condition of Supply of electricity filed by NDPL in various court proceedings, it is mentioned that the cost of the transformer for providing the supply at medium voltage should be borne by the service provider. If this is so, the NDPL, cannot impose the cost of installing the transformers/HVDS on the general consumers.
- (h) That the Ld. Counsel relied on SK Based Ali and Ors. Vs. W.B.S.E.B. and Ors MANU/WB/0035/2004 Equivalent Citation : 2004(2)CHN222, wherein it was held by the Hon'ble High Court of Calcutta, that the cost of electric plant is to be recovered from the consumer. Electric plant means any plant, equipment, apparatus or appliance used for, or connected with, the generation, transmission, distribution or supply of electricity, but does not include, inter alia, an electric line. It cannot be disputed that transformer is an equipment, which is necessary for transmission of electricity and similarly transmission line is an apparatus or appliance for transmission of electricity. It appears that the expression electrical plant used in Section 46 of the Electricity Act 2003 would include transformer as well as the transmission lines and accordingly distribution licensee is entitled to charge expenses reasonably incurred for providing transformer as well as transmission line in addition to electric line from the applicant seeking supply of electricity. It appears that the present mandate of the legislature is that the distribution licensee is entitled to charge the cost of installation of a transformer and also the cost of laying the cable and other apparatus to energise such transformer from the consumer.
- (i) That the impugned order of the Commission is in violation of the National Electricity Policy and also of Tariff Policy issued by the Government of India under the Electricity Act 2003 which are statutory in nature and are binding on the Commission.

4. Sh. Amit Kapoor, the Ld. Counsel for the Respondent Discoms submitted the following :

- (I) That the applicant has filed the application for review before the Commission after its Writ Petition (C) No. 8378/2006, was dismissed by the Hon'ble Delhi High Court vide its Order 6<sup>th</sup> July 2006. As per the remedy available to the applicant vide High Court Order of 6.7.2006, the applicant has elected to file the application for review of the Commission's impugned Order dated 18.11.2005. It was incumbent upon the Review Petitioner to satisfy the Hon'ble Commission with respect to the maintainability of its application. The review application of the Review Petitioner was strictly to be confined within the scope and ambit of Order 47, Rule 1 of Code of Civil Procedure. It is further submitted that the Review Petitioner has miserably failed to discharge its burden.
- (II) That the Electricity Act, 2003 seeks to strike a fine balance between two interests which can at times be conflicting, as reflected in Section 61(i)(d) thereof, being ;
- a) Consumer interest to get the affordable reliable supply of electricity and service and the corresponding obligation of the utilities to give supply. This is, inter alia, enshrined in Section 43.
- b) Interest of utilities to recover legitimate dues, tariff, charges etc. and the corresponding obligation of consumers to pay the dues in a timely manner. This is, inter alia, enshrined in Sections 42, 44, 45, 46, 47 and 48. Thus, unless the mandate of Section 43 on the one hand and Sections 42, 44, 45, 46, 47, 48 and 62(6) on the other, are carried in fair and balanced manner, the objectives of the Electricity Act shall get frustrated. The Counsel has further made reference to the proviso to Section 43 of the Electricity Act, 2003 to emphasize upon the duty of the Licensee.
- He has also made a reference to the judgement in case of S.K. Jindal Versus BSES Rajdhani Power Ltd. and Anr. dated 20.7.2006 in Writ petition (C) 17880/2004, where the Ld. Counsel for the petitioner has relied upon Section 43 of the Electricity Act, 2003 and submitted that being a Licensee, the Respondent is under a duty to ensure electricity supply to any consumer who so desires. The petitioner also relied upon the order dated 15.12.2000 passed in Civil Writ Petition 4852/99, the said Order is reproduced below:-

“This petition can be disposed of, in view of the affidavit dated 04.5.2000 filed by Mr. K.S. Singh, Additional Secretary (Power), Deptt. Of Power, Govt. of NCT of Delhi. In para 7 of the affidavit, it has been stated that Govt. has agreed to allow temporary connections in Sainik Farms

area. If that is the Policy of the Government, then let the petitioner be granted temporary connection as per the policy of the Government. Counsel for the Petitioner says that pursuant to the order passed by this Court, temporary connection was granted to the respondent. That temporary connection will continue subject to payment of charges as well as other formalities if any, required by the respondent. With these observations, petition stands disposed of.

December 15, 2000

Sd/-  
Vijender Jain  
Judge"

(III) That the Petition of Licensee, NDPL was not for tariff and Commission has applied the principles and judgement applicable to tariff while disposing of the said petitions of NDPL. The above contention of the applicant is absolutely misconceived, as NDPL by way of its said petition has prayed for appropriate guidelines in the interest of consumers, specifically agricultural consumers only and has merely put up a proposal in view of the difficulties being faced by it viz-a-viz, its obligation under Section 43 of the Electricity Act 2003. It is submitted that the Commission by its impugned Order dated 18.11.2005 has directed the Discoms to file their respective action plan where the network requires extension by means of some new installation. Further, the Hon'ble Commission has specifically held in para 15 that introduction of HVDS should be carried out on the ground only after the action plan has been approved by the Commission. Therefore, the grievances of the Review Petitioner are without any basis and are premature.

(IV) That the submissions of the applicant that in terms of Section 11 of DERA, 2000, the Commission does not have jurisdiction to pass the impugned order is incorrect for the following reasons :-

(a) The Commission has necessary powers under Section 11(i) of DERA including sub Sections (d), (f), (g), (m), (n) thereof.

(b) It is a settled position of law in terms of Section 62 of the Electricity Act 2003, read with the decision of the Hon'ble Supreme Court in various matters including WBERC versus CESC Ltd. and BSES Ltd. Versus Tata Power Co. Ltd that :

(1) Tariff for supply of electricity within a state shall be subject to the provisions of the Electricity Act and shall be determined by the Appropriate Commission.

(2) The Commission has the exclusive power to determine the tariff in which function it shall be guided by the factors and principles enumerated in clause (a) to (d) of Section 62.

(V) It is a settled law that if an authority has power under the law merely because while exercising that power, the source of power is not specifically referred to, that by itself does not vitiate the exercise of power, so long as the power does exist and can be traced to a source available in law. It is submitted that the applicant has grossly misconstrued and misinterpreted the provision of Section 11 of DERA and various provisions of the Electricity Act, 2003.

(VI) That the Commission has no power or jurisdiction to decide in respect of approving proposal for HVDS network of the Licensee for supply of electricity, in absence of Regulations, is misconceived. The Ld. Counsel relied upon the judgement of Hon'ble Supreme Court in the principle appeal 1299 of 1967 in the matter of Mysore State Road Transport Corporation versus Gopinath Gundachar and City Board Mussoorie Vs. U.P. State Electricity Board, Lucknow, Civil Appeals Nos. 814 and 815 of 1974 D/8-2-1985, wherein it has been held that until the framing of the Regulations, the concerned authorities can discharge the functions and duties on such terms and conditions as it thinks fit.

(VII) That the Applicant has sought to infer that as per Section 43, it is the duty to extend the electricity lines and poles to the premises of the consumers at Licensees own cost, while submitting that the cost of extending network is not permissible to be recovered as reasonable expenses from the consumers who are neither beneficiaries nor the users of the new connections. The Ld. Counsel submitted that the above submission is a deliberate misreading of law and contrary to the very scheme of the Electricity Act. He has further submitted that :

- (i) Section 2(22) "electrical plant" means any plant, equipment apparatus or appliance or any part thereof used for, or connected with, the generation, transmission, distribution or supply of electricity but does not include electric plants of a captive generating plant referred to in section 9 or generating station referred to in section 10 to any transmission lines or sub-stations or generating stations or the load centre, as the case may be -
  - (a) "an electric line"; or
  - (b) a meter used for ascertaining the quantity of electricity supplied to any premises; or

- (c) an electrical equipment, apparatus or appliance under the control of a consumer;
- (ii) Section 2(20) "electric line" means any line which is used for carrying electricity for any purpose and includes-
  - (a) any support for any such line, that is to say, any structure, pole or other thing in, on, by or from which any such line is or may be supported, carried or suspended; and
  - (b) any apparatus connected to any such line for the purpose of carrying electricity;
- (iii) Section 2(19)" distribution system" means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers;
- (iv) Section 46 "Power to recover expenses" : The State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity, in pursuance of Section 43 any expenses reasonable incurred in providing any electric line or electrical plant used for the purpose of giving that supply.
- (v) Section 45(5): The charges fixed by the distribution licensee shall be in accordance with the provisions of this Act and the regulations made in this behalf by the concerned State Commission.

The Ld. Counsel relied on the judgement passed by the Appellate Tribunal in appeal No. 84/2006, in a case of KPTCL versus KERC, wherein it has been held that commercial decisions in respect of the expenses purely lies in domain of the utilities.

(VIII) That the Review Petitioner has contended that impugned order dated 18.11.2005 is violative of Regulations 8, 15(xi) and 16 of DERC (Conduct of Business) Regulations, 2001. The Ld. Counsel submitted that apprehension of the Review Petitioner is premature, as the Commission has never approved the said proposal of NDPL, rather it has directed the NDPL to frame an action plan and get the same approved first. Thus, there is no violation of the various regulations as contended by the Review Petitioner in his above submissions.

(IX) The Ld. Counsel further submitted that the Commission is empowered under Section 61(1)(g) and Section 62 of the Electricity Act, 2003, to frame



Tariff Regulations which progressively reflects the cost of supply of electricity and also reduces and eliminates cross subsidies within the period to be specified by the Commission.

5. The Ld. Counsel for the Licensee, NDPL pointed out that the review of the impugned Order dated 18.11.2005, was strictly to be confined within the scope and ambit of Order 47 of Rule I of Code of Civil Procedure.

6. 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 circumscribed by the 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 of 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”

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, 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

record, justifying the Court to exercise its power of review under the above said provisions.

7. An error apparent on the face of 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 fact of each case. However, an error must be one which speaks for itself and it glares at the face of it which rendered it difficult to be ignored. The error is not one limited to one of the fact but it also included obvious error of law. However, it is further to the fact that the error is not just limited to error of fact or law but an error apparent on the face of the record is a ground, which would render a particular judgement to be reopened. Whether, the error may have crept by oversight or by mistake may need to be established. The exercise of review of judgement under Order 47, Rule 1, is not permissible for an erroneous judgement so as to render the judgement as "reheard and corrected". The law has made clear distinction between what is an erroneous decision and an error apparent on the face of the record. While the first can be corrected by a higher forum, the latter can be corrected by exercise of review jurisdiction. A review petition has a limited purpose that cannot be allowed to be an appeal in disguise.

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

- a) That such evidence was available and of undoubtable character.
- b) That it was so material that the absence might cause miscarriage of justice.
- c) That it could not with reasonable care and diligence have 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.

On the question of scope of review, the Supreme Court in the case of *Aribam Tuleswar Sharma Vs. Aribam Pishak Sharma* (AIR 1979 SC 1047) held that :-

"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. But it

may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of Appeal. A power of review is not to be confused with appellate power which may enable an appellate Court to correct all manner of errors committed by the Subordinate Court".

9. Supreme Court while discussing the scope and jurisdiction of mistake apparent on the face of record has held that :

"The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of order 47, Rule 1, CPC. The review petition has to be entertained only on the ground of error apparent on the face of the record and not on any other ground. An error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions. The limitation of powers of court under Order 47, Rule 1, CPC is similar to the jurisdiction available to the High Court while seeking review of the orders under Article 226".

10. 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 has to be detected by process of reasoning and can hardly be said to be an error apparent on the face of record justifying the Court to exercise its power of review under Order 47, Rule 1 CPC. In exercise of the jurisdiction under Order 47, Rule 1 CPC, it is not permissible for an erroneous decision to be "reheard and corrected". There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise".

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

"A review of a judgement 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. Let us refer to statutory provisions mentioned by the Review Petitioner as well as the Respondent Licensee;

Section 43 of the Electricity Act 2003 provides that –

(1) Every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission.

Provided further that in case of a village or hamlet or area wherein no **provision for supply of electricity exists, the Appropriate Commission may** extend the said period as it may consider necessary for electrification of such village or hamlet or area.

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1) :

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission .

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.

**(b) Section 42.** provides that .(1) It shall be the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.

**(2)** .....

**(c) Section 44** provides that :. Nothing contained in section 43 shall be taken as requiring a distribution licensee to give supply of electricity to any premises if he is prevented from doing so by cyclone, floods, storms or other occurrences beyond his control.

**(d) Section 46** provides that :. The State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses reasonably

incurred in providing any electric line or electrical plant used for the purpose of giving that supply.

(e) **Section 48** provides that : . A distribution licensee may require any person who requires a supply of electricity in pursuance of section 43 to accept –

(a) any restrictions which may be imposed for the purpose of enabling the distribution licensee to comply with regulations made under section 53;

(b) any terms restricting any liability of the distribution licensee for economic loss resulting from negligence of the person to whom the electricity is supplied.

(f) **Section 61** provides that :. The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-

(a) the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;

(b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles;

(c) the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;

(d) .....

(e) the principles rewarding efficiency in performance;

(i) the National Electricity Policy **and tariff policy**;

(g) **Section 62** provides that . (1) The Appropriate Commission shall determine the tariff in accordance with provisions of this Act for –

(a) supply of electricity by a generating company to a distribution licensee:

Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;

(b) .....

(c) .....

(d) retail sale of electricity.

Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.

(h) **Delhi Electricity Reform Act, 2000, Section 11** (1) provides that : The Commission shall discharge the following functions namely :

a) .....

b).....

c).....

d) to promote competition, efficiency and economy in the activities of the electricity industry to achieve the objects and purposes of this Act;

f) to regulate the operation of the power system within the National Capital Territory of Delhi;

g) to set standards for the electricity industry in the National Capital Territory of Delhi including standards related to quality, continuity and reliability of service;

m) to regulate the working of the licensees and other persons authorised or permitted to engage in the electricity industry in the National Capital Territory of Delhi and to promote their working in an efficient, economical and equitable manner;

n) to require licensees to formulate prospective plans and schemes in coordination with others for the promotion of generation, transmission, distribution, supply and utilisation of electricity, quality of service and to devise proper power purchase and procurement process;

**(i) DERA Section 28(10)** provides that :

a) the expected revenue from charges means the total revenue which a licensee is expected to recover from charges for the level of forecast supply used in the determination under sub-section (5) above in any financial year in respect of goods or services supplied to customers pursuant to a licensed activity; and

b) Tariff means a schedule of standard prices or charges for specified services which are applicable to all such specified services provided to the type or types of customers specified in the tariff.

**(j) Regulation 8** of DERC Comprehensive (Conduct of Business) Regulations 2001, provides that :

(i) It shall be open to the Commission to permit any association/forum or other bodies corporate or any group for consumers to participate in any proceedings before the Commission on such terms and conditions, in regard to the nature and extent of participation, that the Commission may consider appropriate.

(ii) It shall be open to the Commission for the sake of timely completion of proceedings, to direct grouping of associations/groups/forums referred to above for submission of respective petitions/affidavits collectively.

(iii) The Commission may as and when considered appropriate notify a procedure for recognition of associations, groups, forums or bodies corporate as registered consumer association for purposes of representation before the Commission.

(iv) The Commission may appoint any officer or any other person to represent consumers' interest if considered necessary.

(v) The Commission may direct payment to the officer or person appointed to represent the consumers' interest such fees, costs and expense by such of the parties in the proceedings as the Commission may consider appropriate.

- (k) Regulation 15(xi) of DERC Comprehensive (Conduct of Business) Regulations 2001, provides that :

If the Commission admits the petition, it may give such orders and directions as may be deemed necessary, for service of notices to the respondent(s) and other affected or interested parties; for the filing of replies and rejoinder in opposition or in support of the Petition in such form as the Commission may direct and for the petition to be placed for hearing before the Commission.

- (L) Regulation 16 of DERC Comprehensive (Conduct of Business) Regulations 2001, provides that :

Service of notices and processes issued by the Commission.

- (M) Regulation 53(1) of DERC Comprehensive (Conduct of Business) Regulations 2001, provides that:-

" the proceedings before the Commission shall be open to the public provided that the Commission may, if think it fit and for reasons to be recorded in writing, order at any stage of proceedings of any particular case that the public generally or any particular person or group of persons shall have restricted access to proceedings".

- (N) Regulation 54(1) of DERC Comprehensive (Conduct of Business) Regulations 2001, provides that:-

"There any public application, petition or other matter is required to be published under the Act or these Regulations or as per the directions of the Commission, it shall, unless the Commission otherwise Orders or Act or regulations otherwise provided be published not less than 7 days before the date fixed for hearing."

- (O) Regulation 55 of DERC Comprehensive (Conduct of Business) Regulations 2001, provides that :

Inspection of Commission's records and confidentiality.

13. Now, before analysing the issues raised before us, let us examine the petition on High Voltage Distribution System (HVDS) for tube well connections in NDPL area filed by the Licensee, NDPL.

- i) Government of Delhi privatised electrify distribution in Delhi as a part of the reform process in Power Sector. Pursuant to this privatisation, NDPL has been working towards its commitment to improve the Network reliability and reduce the level of AT&C losses by at least 17% over the next 5 years.
- ii) This petition is in specific reference to the Tubewell connections in NDPL area. There are app. 6000 Agriculture Power (AP) connections in NDPL area and as per the data base, the majority of these Tubewell connections presently are on Low Tension (LT) network of supply,

extended to a large geography of more than 150 sq. Km., from several 100 KVA transformers. As these tube well connections are installed in 'Kothras' which are generally locked (without any occupant), it is not possible to take the reading on a regular basis, resulting in provisional billing and ultimately, non payment. There is also tremendous misuse of these connections, either by way of :

- a) Tapping enroute the large LT network, or
- b) by way of Meters by passed/Old metes having been fixed.
- c) Meters bypassed while Consumption is made.
- d) Connection being used by farmhouses for non-agricultural purposes.

Further as the LT network is very vast and is easily accessible to the consumers, most of these, as also other consumers, resort to stealing of Power from the LT Network, resulting into negligible recording in the tubewell meters.

- iii) In the prime interest of Agricultural Consumers of NDPL and to ensure continuous and uninterrupted power supply to such Consumers, NDPL has made the following proposal: Considering high energy & revenue loss due to the tube well network and failure/burning of the transformers resulting into increase in CAPEX and consumer resentment, all such connections need to be provided on HVDS Network. HVDS Network will reduce T&D losses, improve voltage profile and prevent theft of electricity by such consumers, as also to some extent prevent theft of Conductor, as the amount of metal conductor in the High Voltage Network is much lesser compared to LT network, as also the Licensees plan to deploy auto-reclosures & time graded sectionalizer which would switch-on circuits after transient faults, created intentionally, are removed. The cost involved for converting existing tube well network into HVDS network shall be app. Rs.1,00,000/- to Rs.4,00,000/- per consumer depending on geography. Considering a total no. of 6000 agricultural connections in NDPL area and considering an average of Rs.2.5 to Rs.3 lakh per consumer & also the fact that about 500 more pending New Connections are to be accepted by NDPL, the total cost involved will be app. Rs.200 crore.

14. The relevant portions of the impugned order of the Commission dated 18.11.2005 are as follows :

- i) The Commission is of the opinion that since the LT network is already in place, there is no immediate need to uproot the entire LT network. The magnitude of cost involved is huge and what has to be kept in mind is that the loss reduction on account of introduction of HVDS system is stated to be only 0.5% and the pay back period for the entire scheme is around 20 years. The Commission, therefore, directs the Licensees to strengthen their LT network and ensure that it is duly maintained. The



Licensees are however at liberty to introduce the HVDS network at those places where the network requires extension by means of some new installations. The Licensees will submit an Action Plan along with full details and cost for introduction of HVDS connections in the area. These plans have to be submitted along with the other CAPEX plans of the Discoms. Keeping in view the magnitude of funds required, the Action Plan should phase out the programme over at least a 3 year period. Introduction of HVDS should be carried out on the ground only after the Action Plan has been approved by the Commission. Strengthening of LT network or giving new connections on LT can, however, be done rightaway.

- ii) On the issue of who is to bear this cost, the Commission has minutely examined the financing procedure at the time of DVB and has observed that except for Service Line charges, no other expenditure was being borne by the consumer. This being the case, to expect that each individual consumer will pay, at times, more than Rs.1 lakh as Development Charge for a tube-well connection will not be reasonable. The Commission is alive to the fact that Development Charges are shared in the ratio of 50:50 between the Discom and the Developer. The Developer, in turn, recovers this money from the consumers. In this instant case, a departure is being made since there is no Developer involved and because the connections are widely dispersed, the burden on each consumer will be very high. The Discoms, therefore, are directed to include the expenditure as part of their ARR and the consumers would be liable to the Service Line Charges, Development Charges etc. for unelectrified areas as cited in the Schedule of Miscellaneous Charges fixed by the Commission in June 2003. The Discoms, however, shall ensure that all laws and regulations are complied with before connections are energised.

15. The contention of the applicant that in terms of Section 11 of DERA 2000, the Commission does not have jurisdiction to pass the said impugned order is incorrect, baseless, a clear misreading of Regulation of DERA 2000, besides being erroneous. Whereas Section 11(1) of DERA provides that :

The Commission shall discharge the following functions namely :

- f) .....
- g) .....
- m) to regulate the working of the licensees and other persons authorised or permitted to engage in the electricity industry in the National Capital

Territory of Delhi and to promote their working in an efficient, economical and equitable manner;

- n) to require licensees to formulate prospective plans and schemes in coordination with others for the promotion of generation, transmission, distribution, supply and utilisation of electricity, quality of service and to devise proper power purchase and procurement process.

16. There is no doubt that the Applicant has wrongly construed and misinterpreted the said provision of Section 11 of DERA. Further, it is a settled position of law in terms of Section 62 of the Electricity Act 2003 read with the decision of Hon'ble Supreme Court in WBERC versus CESC Ltd. reported as 2002 (8) SSC 715 that determination of tariff for supply of electricity within a State shall be subject to the provisions of the Electricity Act and shall be determined by the Appropriate Commission. The Commission has exclusive power to determine the tariff in accordance to the provisions of Section 62. Sub-Section 1 provides that "Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for :

- a) Supply of electricity by a generating company to a distribution licensee.
- b) .....
- c) ....
- d) Retail sale of Electricity.

Sub-Section 3 provides that :-

"The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required."

17. The Commission has observed that it is a settled law that if an authority has certain powers under the law and merely because while exercising such powers, the basic source of power is not specifically referred to, that by itself does not vitiate the exercise of power so long as the power does exist and can be easily traced to the source available in law. In this respect, it is relevant to refer to the earlier pronouncement of Hon'ble Supreme Court in N Mani Versus Sangita Theatre and others reported as (2004) 12 SCC 278 where the Hon'ble Supreme Court held thus :

- “(a) The question of granting exemption to touring cinema within the purview of sub Rule (2) of Rule 14 of Tamil Nadu Cinema (Regulations) Rules, 1957 is in issue in this appeal.
- (b) The Appellant owns and operates a touring talkies by the name of Sh. Karthikeya Touring Talkies. The State of Tamil Nadu has enacted the Tamil

Nadu Cinema (Regulations) Act 1957, with the object of Regulating exhibitions by means of Cinematographs in the State of Tamil Nadu. Section 10 of the Act empowers the Government to make Rules to carry out the purposes of the Act. **Section 11 of the Act provides that the Government may by order in writing exempt, subject to such conditions and restrictions, as they may impose any Cinematograph exhibitions or class of Cinemas or any place where Cinematograph is given from any of the provisions of this Act or of any Rules may be there under.**

(c) In exercise of the power conferred by the Act, the State of Tamil Nadu has framed the Tamil Nadu Cinema (Regulations) Rules 1957. Rule 14 thereof reads as under :-

“Section 14(1) provides that there shall be no restriction to the grant of license to permanent touring cinemas on the basis of population in any place, except towns with a population of 50,000 and above in which no touring cinemas will be allowed, if there are three or more permanent cinemas.

(2) the restriction in respect of distance between cinema shall be as specified below :-

A touring cinema in any place shall not be allowed within a distance of 1.609 KM. of next permanent cinema located in the same local area or in the adjacent village, Panchyat or town or in the city of Madras, the local area for this purpose means the area within the jurisdiction of a Municipal Council or a Panchyat Board or a Revenue Board. The distance between any two touring cinemas shall not be less than 0.402 KM. There shall be no restriction in regard to the distance between one permanent cinema and another permanent cinema.

The Rule was amended by Government Order No. 1326 dated 6.9.95 which reads as under:-

“In the said Rules -

In Rule 14, for sub-Rules 1 and 2, the following sub-Rules be substituted namely :-

- (1) There shall be no restriction to the grant of license to permanent and travelling cinema on the basis of the population.
- (2) A travelling Cinema in any place, should not be allowed within a distance of 1.609KM of the nearest permanent cinema located in the same local area or in the adjacent local area.

Provided that the Government may for reasons to be recorded in writing permit a travelling cinema within the distance specified in this clause from the nearest permanent cinema.

Provided further that a travelling cinema may be allowed to complete its full term of 5 years, even if a permanent cinema comes up within distance specified in this clause.

Provided that the Government for reasons to be recorded in writing may permit a travelling cinema within the distance specified in this clause from the nearest travelling cinema.

- (d) A perusal of the Order of the High Court shows that the principal reason which has prevailed with the High Court in setting aside the Order dated 30.10.1995 is that **there is no reference made therein to Section 11 of the Act**. In our opinion the Division Bench of High Court was not right in framing opinion, which it has done. The power to grant permission has been specifically conferred on the Government by the proviso inserted to Rule 14 by G.O. N. 1326 dated 6.9.1995. It is noteworthy that in an earlier round of litigation initiated by the Respondent, the constitutional validity of above mentioned G.O. N. 1326 dated 6.9.1995 was upheld. **Merely because Section 11 of the Act was not specifically referred in the Order dated 30.10.1995, that could not have been a ground for setting aside the permission dated 30.10.1995."**

Thus, we are of the considered view that Review Petitioner in this case has misconstrued and misinterpreted the provisions of Section 11 of DERA.

18. It is contended by the Review Petitioner that impugned Order dated 18.11.2005, is violative of Regulations 8, 15(xi), 16, 53, 54 and 55 of DERC (Conduct of Business) Regulations, 2001.

19. The Commission has considered the regulations 8, 15(xi), 53 and 54 in detail and also looked into the regulations 16 and 55. The Commission is of the opinion that there is no violation of any of the above mentioned Regulations as alleged by the Review Petitioner. It is also observed that the Regulations 16 and 55 have no link with the present review petition. It appears that the apprehension of the Review Petitioner is premature, unwarranted and uncalled for, as the Commission has not approved the proposal of Respondent, NDPL. Rather after analysing the said proposal from all angles, it has directed the licensee, NDPL, to submit an action plan alongwith the full details and cost for introduction of HVDS connection in the area. These plans have to be submitted

alongwith the other capital expenditure plans of the Discoms. Keeping in view the magnitude of funds required, the action plan should phase out the programme over at least 3 years period. **Introduction of HVDS is to be carried out on the ground only after the action plan has been approved by the Commission.** Strengthening of LT network or giving new connections on LT – was however, to be done right away. **Thus, it is obvious that the said proposal of the NDPL was not approved by the Commission.**

20. The Review Petitioner has submitted that as per Section 43 of the Electricity Act 2003, it is the duty of the Licensee to extend the electricity lines and poles to the premises of the consumers at their own cost. The cost for extending the network is not permissible to be recovered as reasonable expenses from the consumers who are neither beneficiary nor the users of such connections.

21. The Commission has considered the above submission of the Review Petitioner and is of the view that the above submission is incorrect and misconceived. The above view of the Commission is based on clause 19, 20, 22 of Section (2), Section 45(5) and Section 46 of the Electricity Act 2003, where a clear demarcation has been made regarding expenses to be incurred by the Distribution Company and the consumer, who has applied for a new connection. Further, Section 46 has clearly stated that State Commission may, by Regulations, authorise a distribution Licensee to charge from a person requiring a supply of electricity, in pursuance of Section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.

22. (i) The Review Petitioner has submitted that the Commission has no power or jurisdiction to consider the proposal for HVDS network of the Licensee, NDPL for supply of electricity, particularly to agricultural consumers in absence of Regulations to be framed by the Commission itself. The Commission finds the submission of the Review Petitioner to be untenable. The Commission's view is based on Supreme Court decision in the case of **City Board Mussoorie versus U.P. State Electricity Board in Civil Appeal Nos. 814 and 815 of 1974 reported, AIR 1985 SC 883. Section 46(1) of the Electricity (Supply Act) of 1948 does not say that no grid tariff can be fixed until Regulations under Section 79(h) are made.** It only provides that the grid tariff shall be in accordance with any Regulations made in this behalf. That means that if there were any Regulations the grid tariff should be fixed in accordance with such Regulations and nothing more. **The framing of Regulations under Section 79(h) of the Act cannot be a condition precedent for fixing the grid tariff.** It is

true that Section 79(h) of the Act authorises the Electricity Board to make Regulations laying down the principles governing the fixing of grid tariffs. **But Section 46(1) of the Act does not say that no grid tariff can be fixed until such Regulations are made.**

- (ii) Further, the Appellate Tribunal for Electricity in Appeal Nos. 4, 13, 14, 23, 25, 26, 35, 36, 54 and 55 of 2005 has observed that pressing necessity to determine tariff cannot be postponed or overlooked for want of Regulations, which could not be framed in a short time. Although, the need and importance of framing the Regulations cannot be undermined, the non-existence of Regulations, however, cannot be a ground for the Commission to justify non-determination of tariff by it. The Legislative command to determine the tariff under Section 64 has to be carried out by the Commission, once an application of a generator or a licensee is received and it cannot be stifled or diluted because of the failure of the Commission to frame the Regulations. The provisions requiring the Commission to determine the tariff cannot be held to be in-operative till such time the Regulations are framed under Section 61 read with Sections 178 & 181 of the Act of 2003.
- (iii) The duty imposed on the Commission to determine tariff could be well discharged without the Regulations, if they have not been framed, by seeking guidance from the factors and parameters laid down in Section 61. There is nothing in the language of the provisions of the Act of 2003 including Section 61 thereof, which bars the determination of tariff without framing of Regulations.
- (iv) Thus, the above contention advanced by the Review Petitioner is not acceptable. In view of the above mentioned judgements/orders of the Supreme Court/Appellate Tribunal for Electricity the Commission has jurisdiction as well as power to approve the said proposal for HVDS network of the Licensee for supply of electricity even in the absence of Regulations to be framed by the Commission.

23. Considering the submissions raised by the Review Petitioner, we feel that the Review Petitioner has not been able to make out a case for review of Commission's Impugned Order dated 18.11.2005, wherein the Commission has directed the Licensee NDPL to submit an action plan alongwith full details and cost for the introduction of HVDS connections in the area. These plans have to be submitted alongwith the other capex plans of the DISCOMS. **Introduction of HVDS is to be carried out on the ground only after the action plan has been approved by the Commission.** The Review Petitioner has failed to show that

there is any error apparent on the face of the record which would justify the review. Nor the Review Petitioner is able to bring out any new evidence of such nature which would require reconsideration of the Commission's Impugned Order dated 18.11.2005. The Commission had not approved the said proposal of the Licensee NDPL for introduction of HVDS system. The action of the Review Petitioner is pre-mature as he acted merely on an apprehension.

24. The Review Petitioner has also filed an application under Section 151 Code of Civil Procedure to extend the stay, granted by Hon'ble High Court of Delhi vide Order dated 15.05.2006 alongwith his application for review of the Commission's Impugned Order dated 25.11.2005. Since the review petition itself is being rejected, the petition for stay also does not survive and is dismissed.

25. On these considerations, this Review Petition alongwith the interim application for extension of the stay of the Impugned Order of the Commission dated 18.11.2005 is dismissed.

26. The Commission orders accordingly.

Sd/-  
(K. Venugopal)  
MEMBER

Sd/-  
(R. Krishnamoorthy)  
MEMBER

Sd/-  
(Berjinder Singh)  
CHAIRMAN

