

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

Ref.F.11(471)/DERC/2008-09/C.F.No.1848/

Petition No. 71 / 2008

In the matter of:

1. Vipul Pandhi
D-8, DSIDC Industrial Complex,
Rohtak Road, Nangloi,
Delhi-110041. **...Complainant No. 1**
2. Subhash Chander Trehan,
D-8, DSIDC Industrial Complex,
Rohtak Road, Nangloi,
Delhi-110041. **...Complainant No. 2**

VERSUS

BSES Rajdhani Power Limited
Through its : **CEO**
BSES Bhawan,
Nehru Place,
Delhi-110019. **...Respondent**

Coram:

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

ORDER (REVIEW)

(Date of Order: 05.10.2011)

1. The instant petition dated 12.7.2011 has been filed by the petitioner Sh. Subhash Chandra Trehan (Complainant No. 2) for reviewing the Commission's order dated 16.06.2011, passed in above matter under Section 142 of the the CGRF Standards – Metering & Billing) Regulations, 2002.
2. According to the Petitioner the Order passed by the Commission suffers from mistakes and errors apparent on the face of record which are required to be corrected and that there are other sufficient reasons for reviewing and/or modifying the Order.
3. 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. 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.

4. With the enactment of the Electricity Act, 2003, the State Electricity Regulatory Commission have been vested with powers for reviewing its decision, 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 decision, directions and Orders, therefore, derives its scope and authority from the aforesaid section of Electricity Act 2003 read with Order 47, Rule 1, of the Code of Civil Procedure.
5. 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 reproduced 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”
6. 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.

7. Under Order 47, Rule 1, CPC, Order/Judgement 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 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.
8. 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 law 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.
9. 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."

10. 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 judgement/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.
11. The applicant has sought review of the above order on two aspects :
- (a) To issue direction to the respondent for revising the bill either for difference of rates for 12 months or single time penalty
 - (b) To impose more severe penalty on the respondent in the interest of justice. The reasons for seeking review on the above aspects have been briefly summarised below:
 - (i) The applicant herein have raised limited issue on aspect on correctness of the bill raised by the respondent. It has been submitted that the bill raised by the respondent was Rs. 11,49,786/-. The bill was later reduced to Rs. 6,36,220/- and then to Rs. 2,61,322/- (Rs. 2,65,231/- with LPSC)
 - (ii) As per Petitioner, such wide variations in the bill raises serious doubt about the correctness of even the final bill. In fact the final bill of Rs/ 2,61,322/- is still not correct and the same was paid by the complainant under compulsion to avoid disconnection. However the complainant is still within his right to pay the correct amount and not the inflated amount raised by the respondent at its whims and fancies. That as per the calculations submitted by the respondent, the period for which difference was taken was 18.07.2005 to 01.04.2008. This was more than 12 months as permitted by the Act. Thereafter the difference was multiplied by 2 times penalty. That the applicant has taken up with respondent separately and it has been indicated that they have not billed the applicant under Section 126 of Electricity Act, 2003 but billed as per settlement based on admission by the applicant. This is evident from the calculations submitted by the respondent along with the reply. They thought there was no settlement; the bill could have been raised either for 12 months or single time penalty even if the letter of the applicant is construed as tacit acceptance for settlement. The respondent while taking longer period has ignored the

inspections in between when everything was found OK. That as such the respondent would at the most would be loosing only about Rs. 300/- per month on account o difference of tariff and therefore the penalty could not be to the extent of more than Rs. 2 lakhs. That while on the subject, the applicant would most respectfully like to submit that the penalty imposed on the respondent is very less in comparison to the extent of violation of regulation and harassment caused and penalty imposed on the applicant. The overall scenario is that the respondent has got away with penalty of only Rs. 10,000/- whereas the fault of the respondent has made the applicant pay more than Rs. 2 lakhs in addition of harassment and mental torture. The penalty imposed is much less than if calculated in terms of Section 142 of Act, It would thus be in the interest of justice, if this Hon'ble Commission reviews its order to this extent also.

12. From perusal of above it has been observed that the instant petition is devoid of any of the ingredients mentioned in para 6 above, which can qualify its admissibility for review. No fresh evidence/ error of law has been elucidated, which can be considered reason for miscarriage of justice.
13. The only two reasons which the plaintiff has elucidated are:
 - (a) Wrong calculation of billing.
 - (b) Penalty imposed is not appropriate.
14. As far as calculation of billing is concerned the Commission has not gone into the merits of the calculation of billing in the impugned order, as the jurisdiction to decide the billing dispute lies with CGRF and not with the commission.
15. As far as quantum of penalty imposed by the Commission is concerned, that is the discretion of the Commission and order made in the same cannot be reopened.
16. In light of the above narration, the Commission has not found any merit for reopening/reviewing of the above impugned order and hence petition is dismissed.
17. Ordered accordingly.

Sd/-
(J.P. Singh)
MEMBER

Sd/-
(Shyam Wadhera)
MEMBER

Sd/-
(P.D. Sudhakar)
CHAIRPERSON