

## **Delhi Electricity Regulatory Commission**

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

No. F.11(995)/DERC/2013-14/

### **Review Petition No. 23/2013**

**In the matter of:**      **Reconsideration and/or review and/or modification of certain observations & findings in the interim Order dt. 01.02.2013 passed by the Hon'ble Commission relating to approval of (i) Tariff for Generation of Electricity from 1 MW Keshavpuram Solar PV Project (ii) Terms and Conditions Entered between NDPL-G and NDPL-D for sell/purchase of entire Solar Energy Generated from this project.**

Tata Power Delhi Distribution Ltd.  
Through its: **Sr. General Manager**  
33Kv Sub Station Building,  
Hudson Lane,  
Delhi 110 009

....**Petitioner**

**Coram:**  
**Sh. P.D. Sudhakar, Chairman, &**  
**Sh. J.P. Singh, Member.**

Appearance:

1. Mr. K.Datta, Advocate, TPDDL
2. Mr. Anurag Bansal, TPDDL
3. Mr. Varun Sharma, TPDDL
4. Mr. Puneet Munjal, TPDDL
5. Mr. Vishal Vij, TPDDL
6. Ms. Sugata Mukherjee, TPDDL

### **ORDER**

(Date of Order: 30.12.2014)

1. The Review Petition has been filed by M/s Tata Power Delhi Distribution Limited (TPDDL), against the Commission's Interim Order dated 01.02.2013 in Petition no. 06/2010, whereby the Petitioner was asked to approach the State Nodal Agency for REC registration /accreditation for obtaining REC, which shall be in the overall interest of the consumers of NCT OF Delhi.
2. M/s TPDDL has filed Petition No. 06/2010 for approval of (i) Tariff for Generation of Electricity from 1 MW Keshavpuram Solar PV Project, and (ii) Terms and Conditions Entered between NDPL-G and NDPL-D for sale/purchase of entire Solar Energy Generated from this project under Section 62(1) (a) 86(1)(a), (b)

and (e) of the Electricity Act, 2003 read with Delhi Electricity Regulatory Commission (Comprehensive Conduct of Business) Regulations, 2001.

3. The Review Petition has sought review under the provisions of Section 94(1)(f) and 185 (3) of the Electricity Act, 2003, and Regulation 57 and 58 of the Delhi Electricity Regulatory Commission (Comprehensive Conduct of Business) Regulations, 2001, on the findings contained in Paragraph 4 and 5 of the impugned Order dated 01.02.2013 relating to obtaining approval from State Nodal Agency for REC registration/accreditation for obtaining REC. The relevant paragraphs are mentioned as under:

4. *The Commission directed that since no financial assistance is available for this project, therefore, Petitioner can approach the State Nodal Agency for REC registration/accreditation for obtaining REC, which shall be in the overall interest of the consumers of NCT of Delhi. This may be done with immediate effect.*

5. *The Commission also observed that in the case of such a project, a separate dispensation can be considered for energy fed into the generation till REC registration and accreditation, which shall in any case be not later than 31.03.2013.*

4. The Ld. Counsel for the Petitioner submitted that vide letter dated 22.07.2009, the Commission was pleased to grant "in-principle" approval for the said pilot project to promote the use of renewable energy and to mitigate global warming. Further, it has already been disclosed by the Review Petitioner that there are no subsidies/incentives available for this project and there is no mandate/requirement for obtaining REC registration/accreditation from the State Nodal Agency as per the "in-principle" approval letter issued by the Commission. Moreover, no useful purpose shall be served even if an application for obtaining REC registration/accreditation is made to State Nodal Agency as the same is not even relevant for determination of tariff for generation as sought under the Petition no. 06.2010.
5. The Ld. Counsel further submitted that the levelized tariff as claimed for this project is strictly in consonance with the Central Electricity Regulatory Commission's (CERC) Regulation 2009 read with Order dated 09.07.2010 passed by this Commission adopting CERC Regulations and hence, the same is liable to be approved by this Commission without any further requirement of application to the State Nodal Agency for REC registration/accreditation for

obtaining REC, which shall be in the overall interest of the Consumers of NCT of Delhi as directed by this Commission vide Order dated 01.02.2013.

6. A review of an order can be made under the provisions of Order 47, Rule 1 of CPC, which are re-produced as below:-

**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.*

7. In accordance with the provisions under Order 47 Rule 1 of Civil Procedure, 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; of*
- 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.*

8. 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.

9. 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."*

10. 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 but 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.

11. 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.*

12. Section 86.1(e) of the Electricity Act 2003 (the Act) mandates promotion of co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid. Section 61(h) of the Act provides that, while specifying the terms and conditions of determination of tariff, the Commission shall be guided by the objective of promotion of co-generation and generation of electricity from renewable sources of energy. Section 62(1)(a) read with Section 64 of the Act provides for determination of tariff for supply of electricity by a generating company to a distribution licensee. Further, Section 61 of the Electricity Act, 2003 provides that the Commission shall, inter-alia, be guided by the safeguarding of consumers interests and at the same time cover the cost of electricity in a reasonable manner. Section 62 (v) of the Act says that the Commission may require a licensee or generating company to comply with such procedure as

may be specified for calculating the excepted revenue from the tariff and charges which he or it is permitted to recover.

13. As already stated that as per Section 86(i)(e), it is one of the functions of the State Commission to promote cogeneration and generation of electricity from renewable sources of energy. The Preamble of the Electricity Act, 2003 also emphasizes for protecting interest of consumers, rationalization of electricity tariff and for promotion of efficient and environmental benign policies.
14. For promotion of generation of electricity through renewable energy sources there are various incentives/mechanism in place. Incentives are in the form of capital subsidy for installation of plant, generation based incentives and CDM benefits. REC mechanism is one of the mechanisms to promote generation of renewable energy. All the aforesaid incentives/mechanism are meant to reduce the tariff of electricity generated through renewable energy sources so that the consumers are less burdened and at the same time, generation of electricity through renewable energy sources is promoted.
15. The instant case is a peculiar case in which the project is not entitled for any subsidy either in the form of capital subsidy or generation based incentive. In the absence of such subsidies and incentives the levelised generic tariff for the solar energy would be at a higher side, which will adversely affect the consumers of Delhi. The Commission, in order to safeguard the interest of the consumers as well as to promote the generation of solar energy, has advised the Petitioner to go for REC mechanism which is another instrument for promotion of generation of electricity through renewable energy sources. While directing the Petitioner to approach the State Nodal Agency for REC registration, the Commission has discharged its duties as per the powers and responsibilities conferred on it.
16. Regarding Review of the Interim Order dated 01.02.2013, The Commission has considered the written as well as oral submissions of the Review Petitioner, and the entire record placed before the Commission along with relevant

provisions of the Electricity Act, 2003, Regulations made there under the Civil Procedure Code.

17. Before deciding the instant Review Petition, the Commission has also considered the statement and the documents dated 01.09.2014 provided by the Petitioner in the main Petition for determination of tariff as well as the arguments advanced by the petitioner in a meeting held with the officers of the Commission on 12.11.2014.

18. The Commission is of the considered view that the issues raised in this Review Petition have already been considered by the Commission while delivering the impugned Order and the Petitioner has not brought any new fact and important matter or evidence for consideration of the Commission, neither it has been able to point out or show that there is any mistake or error apparent on the face of the records so as to warrant a review or re-consideration of the aforesaid Interim Order.

19. In view of the aforesaid, it has been observed that the instant petition is devoid of any of the ingredients, which can qualify its admissibility for review.

20. Since the Review Petition does not meet the basic criteria for entertaining such a review petition, it is liable to be dismissed. The Commission orders accordingly.

21. The Review Petition is dismissed.

**Sd/-**  
**(J. P. Singh)**  
**MEMBER**

**Sd/-**  
**(P. D. Sudhakar)**  
**CHAIRMAN**