

OFFICE OF ELECTRICITY OMBUDSMAN

(A Statutory Body of Govt. of NCT of Delhi under the Electricity Act of 2003)

B-53, Paschimi Marg, Vasant Vihar, New Delhi-110057

(Phone No.: 011-26144979, E.mail: elect_ombudsman@yahoo.com)

Review Petition in Appeal No. 01/2024

IN THE MATTER OF

Smt. Prabha Singh

Vs.

BSES Rajdhani Power Limited

Present:

Petitioner: S Bhattacharjee, Sr. Manager and Shri Arav Kapoor, Advocate
on behalf of BSES-BRPL

Respondent: Shri Shashi Bhanu, Husband of the Appellant along with
Shri Kartiekay Mathur, Advocate

Date of Hearing: 26.06.2024

Date of Order: 01.07.2024

ORDER

1. The BSES-BRPL has submitted review petition dated 24.05.2024 in respect of order dated 25.04.2024 passed by the Ombudsman in Appeal No. 1/24 titled Smt. Prabha Devi vs. BRPL.

2. The review petition while referring to the chronology of events claims that the impugned order has been passed due to mistake and error apparent on the face of record and deserves to be reviewed and set aside. However, no specific mention of any error on record or discovery of new material has been made.

3. The various grounds for seeking review of the order inter alia include:

- (i) Lack of jurisdiction under Regulation 13 of DERC's Regulations, 2018.



- (ii) Failure of Appellant to clear deficiencies as intimated, as per Regulation 11(1)(vi) of DERC (Supply Code and Performance Standards) Regulations, 2017.
- (iii) New connection can be only granted upon clearances of dues.
- (iv) Electricity connection disconnection in terms of Section 56 and Section 135 (1A) of Electricity Act, 2003, can be restored only after payment of outstanding dues.
- (v) Direction of Ombudsman on recovery of outstanding dues of theft assessment bill from tenant is contrary to order dated 07.09.2022 passed by Court of ADJ, Saket District Court.
- (vi) Electricity Act and DERC's Supply Code require payment of electricity dues of previous consumer as condition precedent for grant of an electricity connection and have clear nexus with scheme of legislation and objective sought to be achieved.

A prayer has been made for seeking review of the order dated 25.04.2024 and to direct the Appellant to clear all outstanding dues and complete commercial formalities for sanction of electricity at the premises.

4. The review petition was admitted and taken up for hearing on 26.06.2024. During the hearing, the petitioner (Discom) was represented by its authorized representatives and the Respondent was represented by Shri Shashi Bhanu, husband of the Appellant along with Shri Kartiekay Mathur & Shri Shanker, Advocates.

5. During the hearing, the Counsel appeared for the applicant (BSES-BRPL), reiterated their submissions in detail, as stated in the Review Petition. The Counsel also invited attention to a query raised during the last date of hearing, i.e 24.04.2024 with respect to interpretation of Regulation 15 of the DERC Supply Code, 2007, based on decisions by the Delhi High Court in its order of 2009, passed in the matter of Izhar Ahmad & Anr. Vs. BSES-BRPL. On being asked, about any enabling provision in the extent DERC Supply Code, 2017, the Counsel submitted that the intent of act is supported by Regulation 19 (7) of extant DERC Supply Code, 2017. When further asked about relevant provision to file a review, the Counsel quoted various Regulations, such as, Regulation 15 (ii), (iv) & (v) of DERC Supply Code, 2007, Regulation 13 (2) of DERC (Forum for Redressal of Grievances and Ombudsman) Regulations, 2018, Section 43 & 56 of the Electricity Act, 2003, Regulation 10, 11, 19 (2) & (7), 50, 54 (1) & (2), 62, 63 (2) & (5) & 66 (1) of DERC



Supply Code, 2017. Judgment of Hon'ble Supreme Court passed in the case of K.C. Ninan vs. Kerala State Electricity Board and Ors. 2023 was also quoted in detail.

6. In rebuttal, the Counsel who appeared for the Respondent (Smt. Prabha Devi) submitted that the order dated 25.04.2024 was passed by the Ombudsman after considering all the relevant regulations and citations of the High court and the Supreme Court. There is no change in the ownership. The Discom (petitioner) has not filed any case of recovery against her since April, 2022.

7. Both the parties were heard in detail. It was explained to the petitioner (Discom) that all the objections raised/clarifications sought in its review petition were already taken into consideration before passing the order dated 25.04.2024.

8. The law related to Review Petition has been enunciated by the Hon'ble Supreme Court of India in a series of judgments as under:

- a. In *Col. Avatar Singh Sekhon v. Union of India and Others* [10 1980 Supp SCC 562],

".....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. .. The present stage is not a virgin ground but review of an earlier order which has the formal feature of finality."

- b. In *Parsion Devi and Others v. Sumitri Devi and Others* [12 (1997) 8 SCC 715],

"9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of this jurisdiction under Order 47 rule 1 CPC it is not permissible for an erroneous decision to be 'reheard and corrected'. A review petition, it must be remembered has a limited purpose and cannot be allowed to be 'an appeal in disguise.'"



- c. In *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* [15 (1979) 4 SCC 389].....

"3.....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. The Regulation 33 of the DERC (Forum of Redressal of Grievances of the Consumer and Ombudsman) Regulations, 2018 in Regulation No.33 (Power to review by Ombudsman), elaborates as under.

- (i) Any person aggrieved by an order of the Ombudsman, may, upon 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 order was passed or on account of some mistake or error apparent from the face of the record, may apply for a review of such order, within thirty days of the date of the order, as the case may be, to the Ombudsman.
- (ii) An application for such review shall clearly state the 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 order was passed or the mistake or error apparent from the face of the record. The application shall be accompanied by such documents, supporting data and statements as the Ombudsman may determine.
- (iii) When it appears to the Ombudsman that there is no sufficient ground for review, the Ombudsman shall reject such review application.

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

- (iv) When the Ombudsman is of the opinion that the review application should be granted, it shall grant the same provided that no such application will be granted without previous notice to the opposite side




or party to enable him to appear and to be heard in support of the order, the review of which is applied for.

10. Regulation 13 of DERC (Forum for Redressal of Grievances of the Consumers and Ombudsman) Regulations, 2018, is not attracted in the present case, since no booking in the name of Ms. Prabha Singh as a Registered Consumer for the alleged theft under section 135 of the Electricity Act, 2003, exists. There is also no show cause notice issued to her at any stage in this regard. A perusal of the record indicates that before disconnection of the supply, notices dated 12.08.2021, 07.09.2021, 08.10.2021, 06.11.2021, 14.12.2021 and 06.01.2022 were issued to Ms. Prabha Singh, on account of the outstanding dues of Rs.41,870/-. The supply was disconnected and meter removed on 19.01.2022.

11. No notice was issued or criminal liability of Ms. Prabha Singh u/s 135 of Electricity Act fixed at any stage for the alleged theft by the user. The decisions relied upon by the Discom do not support their case, since there is no sale of property or change of ownership in the present case. Even Regulations of 2017, do not contain any provision for liability of the landlord for criminal acts by the tenant. In the light of the scheme of law, there is no explicit or implied provision for fixation of such responsibility. Any such contrary interpretation would be contrary to the maxim "Audi Alteram Partem" – no one should be condemned unheard. The liability of Ms. Prabha Singh for payment of Rs.41,870/- is in conformity with the provision 19(7) of DERC (Supply Code and Performance Standards) Regulations, 2017.

12. The Respondent Discom failed to adduce any evidence in this regard and, therefore, there is no material on record about her criminal liability, for theft as can have a bearing for a review. The booking of Manoj and Neha is a matter on record, who have been subjected to criminal action, as per law.

13. Since the Discom has failed to adduce any new material or could indicate any error apparent on the face of record which may warrant a review of the order passed earlier, the review petition is dismissed as devoid of merit. Petitioner (Discom) is required to comply with the order dated 25.04.2024 in next 15 (fifteen) days and a compliance be sent accordingly.


(P. K. Bhardwaj)
Electricity Ombudsman
01.07.2024