

**OFFICE OF THE 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)

**Review Peetition in Appeal No. 23/2022**  
(Against the CGRF-TPDDL's order dated 23.06.2022 in CG No. 13/2022)

**IN THE MATTER OF**

Shri Sandip Singh

Vs.

Tata Power Delhi Distribution Ltd.

Present:

Appellant: Shri J.S. Bhatia, Son of Shri Sandip Singh

Date of Hearing: 27.10.2022

Date of Order: 28.10.2022

**ORDER**

1. Sh. Sandeep Singh has submitted the instant review petition before the Hon'ble Electricity Ombudsman against order dated 01.09.2022 in Appeal no. 23/2022, and received on 19.9.22. In the Review Petition the appellant has relied upon three judgments passed by the Hon'ble Supreme Court in (i) Civil Appeal no. 5032/2022 (State of Himachal Pradesh & Ors. Vs. Himachal Aluminum and Conductors, decision dated 01.08.2022, in the matter of setting aside of re-assessment order by Hon'ble Himachal Pradesh High Court), (ii) Civil Appeal No. 7465/2021 (Uttar Pradesh Power Corporation Ltd. & Ors. Vs. Kisan Cold Storage and Ice Factory & Ors., Order dated 07.12.2021 pertaining to entertainment by Hon'ble Ombudsman of only grievance raised by consumer and not Discom) and (iii) Civil Appeal No. 2055 and 2056/2022 (Prem Lata Vs. Naseeb Bee & Ors. , Order dated 23.03.2022 in respect of quashing of order of the Trial Court by the High Court in the light of provision of Section 257 of MP Land Revenue Code 1959).



2. The present case pertains to receipt of a bill for consumption of 555 units of electricity for the period from 13.07.2021 to 04.08.2021 in the month of January 2022 after replacement of a meter which was found with KW/KVA mismatch (MDI mismatch). This bill pertained to the month of July/August 2021. Procedure laid down in the DERC Supply Code 2017 was duly followed by the Discom and therefore no violations whatsoever of the Rules or procedure was found either by the Ld. CGRF or the Ld. Ombudsman.

3. The grievance of the appellant is that Ld. Ombudsman did not pass a reasoned order and passed perfunctory order leading to erroneous conclusions. The appellant further contended that the story of the Respondent was accepted leading to miscarriage of justice and their apparent illegal acts could not be absolved by supply of KW / KVA mismatch statement. No compensation was also allowed by the Hon'ble Ombudsman.

4. During the course of hearing on 27.10.2022 of the Review Petition, the Appellant invited an attention to Para 9 of the order dated 01.09.2022 passed by the Ombudsman in which he placed reliance on the admission by the Respondent about the need for testing of the meter within 15 days of replacement particularly with reference to Regulation 32 (2) (i) of DERC Regulations, 2017. He also pointed out the observations of the Ombudsman about the delay in Para 12 of the order and failure of the Respondent to raise the demand for 555 units immediately after the period from 13.07.2021 to 04.08.2021 instead of raising it during January, 2022 for which there was no justification. Mention in Para 11 of the order was also made about the failure of the Respondent to make a formal communication to the Appellant about the mismatch in the MDI (KW/KVA) downloaded data. The Appellant during the hearing asserted that the Ombudsman did not take into account his submissions including a specimen of the lab testing notice of removed meter by one of the Discom, which according to him should be followed by all Discoms without any variance from the procedure. The Appellant also sought to aver that the stand of the Respondent before the CGRF and the Ombudsman were different which resulted in injustice to him.

5. It needs to be mentioned that before the CGRF as well as the Ombudsman, the stand of the Respondent was that the meter replacement form was generated under the Meter Faulty Category (MDI corrupt) and not under Meter Damage. Since the Appellant had a non-cooperative attitude, notice for disconnection under Section 163 (3) of the Electricity Act, 2003 was issued for not allowing the officers to perform their duties. The meter was finally replaced in his presence. Since the MDI KW was greater than KVA, it was indicative of non-measurement of parameters correctly by the meter and therefore, the process of replacement of meter was initiated.

*[Handwritten signature]*

While concluding the arguments, the Appellant submitted that he had made the payment against the bill raised for 555 units to avoid disconnection but was not seeking any relief in this regard, and / or compensation.

6. During the hearing before the CGRF, an opportunity was provided to the Appellant for a second testing of the meter in his presence but the learned counsel denied to avail this. The CGRF also noted that although the Complainant / Appellant was informed about the date and time of testing of the meter but nobody from his side was present during the testing of the meter. The stand of the Respondent through an additional WS before the CGRF was also that due to the parameter mismatch in KW/KVA, the meter was considered to be faulty and meter replacement form under Meter Faulty Category was issued and not under Meter Damage. Since the issue has been considered and settled by the CGRF in their order dated 23.06.2022 and the issue has not been raised before the Ombudsman during the course of hearing on 31.08.2022, this *per se* cannot be read as an error apparent on the face of record as may justify as review of the orders passed. The delay in the issue of bill in January, 2022 did not cause any loss to the Appellant as he was provided adequate time for making payment against the bill. It cannot be a ground for a review in the absence of any error apparent on the face of record.

7. The Appellant also raised the issue of his entrusting responsibility upon him for discharging of burden of proof / onus of proof contradictory to the settled principle of law. In the light of detailed consideration of the matter by the CGRF as well as the Ombudsman, where both the parties were provided adequate opportunity to present their case, such mere allegation cannot be a ground for review.

8. The Review Petition along with the submissions made by the Appellant have been carefully considered.

9. The power for review of its orders by the Ombudsman vests in regulation 33(1) of the DERC (Forum for Redressal of Grievances of the Consumer & Ombudsman) Regulations 2018, which reads as under:-

*"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 record,*



*may apply for a review of such order, within 30 days of the date of the order, as the case may be to the Ombudsman."*

10. Apparently the three decisions of the Hon'ble Supreme Court relied upon do not expressly deal with the issues raised by the appellant before the Ombudsman and were also within public domain on the date of hearing. This does not therefore constitute **"new material which was not within the knowledge of the appellant on the date of hearing"**. Further, the Appellant has not produced any new material as discovered subsequent to the hearing which could have a bearing on his case. It needs to be emphasized that:

- i) Upon consideration of the judgement relied upon, it is seen that these have no bearing on the matter under consideration by the Ombudsman. The law defines the power of the CGRF as well as the Ombudsman. The dictum of the Supreme Court in the case, Civil Appeal No.7465/2021 supra emphasizes that only a consumer and no Discom can approach the Ombudsman, which has apparently been followed in this case in hand. As regards error apparent on the face of record, apart from making averments about perfunctory order and erroneous conclusion, no other details or material has been submitted in support thereof.
- ii) The Supreme Court of India, while considering the Power of Review under the Civil Procedure Code has in cantana of rulings observed as under:

a. 14. 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. 15. 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. 20. In *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* [15 (1979) 4 SCC 389].....

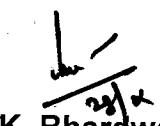
*"3.....The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where 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."*

d. In *State of West Bengal and Others v. Kamal Sengupta and Another* [27 (2008) 8 SCC 612].....

*"21..... In other words, mere discovery of new or important matter or evidence is not sufficient ground for review ex debito justitiae. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier."*

11. It is apparent from the record that, all the issues framed on the basis of submissions made by the Appellant during the hearing, have been judiciously considered by the Ombudsman and a detailed order dated 01.09.2022 was passed on the various identified issues.

The ingredients laid down in regulation 33(1) referred to above are therefore not satisfied. There is, therefore, no merit in the Review Petition. The same is dismissed.

  
(P. K. Bhardwaj)  
Electricity Ombudsman  
28.10.2022