

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.42/2024

IN THE MATTER OF

Shri Amarnath

(on behalf of Shri Lal Bahadur, Proprietor of M/s B S Engineering)

Vs.

BSES Yamuna Power Limited

Present:

Petitioner: Shri Gaurav Gupta, Sr. Manager (Legal) & Ms. Sampanna Pani,
Advocate, on behalf of Delhi Power Corporation Ltd. (DPCL).

Respondent No.1: Shri Amarnath, in person

Respondent No.2: Shri S. P. Anand, Commercial Officer, Ms. Chhavi Rani, Legal
Retainer and Shri Akash Swami, Advocate, on behalf of BYPL.

Date of Hearing: 28.03.2025

Date of Order: 01.04.2025

ORDER

1. The Delhi Power Corporation Limited (DPCL) through its Advocate have filed a petition dated 27.02.2025, seeking a review of the order dated 14.02.2025 passed by the Ombudsman in the matter of Shri Amarnath (on behalf of Shri Lal Bahadur, Proprietor of M/s B S Engineering) vs. BYPL (Appeal No.42/2024).

2. The Applicant has referred to the withdrawal of suit no.148/98 renamed (CS 38/13/08) and 66/2014 withdrawn vide order dated 22.01.2014, order dated 02.12.2010 by the Delhi High Court as well as order dated 18.03.2024 by Hon'ble



Supreme Court in the matter of Govt. of NCT of Delhi vs. M/s Punjab National Press & Anr. (SLP(C) No.35804/2023) whereby Clauses (1) & (2) of the Notification dated 16th / 19th May 2008 which excluded the cases under litigation from the waiver of the bills of private electricity consumers pertaining to sale of power in DESU/DVB period and held discriminatory by the High Court was upheld and the SLP dismissed. The Supreme Court also granted liberty to the Govt. of NCT of Delhi to formulate a policy for one time settlement of recovery of dues. The ground for the review essentially are that setting aside of all the outstanding dues and grant the NOC would amount to judicial overreach and usurping of the power of the legislature, denial of fair opportunity to DPCL to present his case and incorrect contention of the Discom, stating that outstanding dues for the period 2002-2009 were settled and the dues pending were of the DVB period which were not recoverable.

3. The review petition was taken up for hearing on 28.03.2025. During the hearing, all the parties were present. An opportunity was given to all the parties to plead their respective cases at length. Relevant questions were also asked by the Ombudsman as well as the Advisors, to elicit more information on the issue.

4. During the course of hearing, the Advocate/Officer appearing for the DPCL (Petitioner) reiterated the grounds as stated in the review petition. The Ombudsman raised a specific query about the need for fulfillment of the conditions laid-down in Order 47 CPC, namely discovery of new or important matter or evidence which after due diligence was not within the knowledge or could not be produced at the time of hearing or any error apparent on the face of record which necessitated a review. The officer of DPCL present stated that a proper reference to the order of the Supreme Court has not been made in the order dated 14.02.2025. However, there was no specific mention about any new material discovered or any error apparent on the face of record as could validate the request for review.

A plain reading of the content of the order dated 16/19.05.2008 of Govt. of NCT of Delhi read with judgement of the High Court duly upheld by the Supreme Court makes it clear that no discrimination can be made in the matter of waiver between individual consumers who had taken recourse to the litigation and others and, therefore, both categories are equally entitled to the benefit of waiver. Since this view has been upheld, the Appellant, in the present case, is also entitled to the benefit.



5. The Advocate appearing for the Discom supported the above view/interpretation of the order.

6. Shri Amarnath, appearing on behalf of the Appellant who had withdrawn the civil suit filed, raised an issue on the onus of payment, whether it will be on the seller or the buyer of the property, since the outstanding dues would only be against the property. This question *per se* would not arise in the light of the waiver intended by the order of 2008 of Govt. of NCT of Delhi.

7. The power of review lies under Section 114 read with order 47 of CPC. While examining the scope of review the Supreme Court has settled the law 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."

8. It is pertinent to mention that it is the matter on record that the Discom, in its reply dated 12.12.2024 to the appeal had, in paras 5.2 to 5.4, submitted as under:

"5.2) Respondent submits Complainant / Appellant preferred a suit no-148/1998 titled as "M/s B S Engineering Works vs BSES YPL dt.19.03.1998 against the erstwhile DVB challenging the bill of Rs.4,47,429.49 dated 27.01.1998.

5.3) That the Respondent submits that the dues for the period of 04.07.2002 to 27.03.2009 pertaining to the post DVB period / BSES period stands settled for a sum of Rs.1,15,072/- which was duly paid, accordingly the said suit was settled and withdrawn. Hence, the dues for the BSES PEIROD has been settled and have attained finality and now cannot be challenged as being barred by law of res-judicata.

5.4) That the Respondent submits in terms of the Tripartite Agreement, DISCOMS-BSES YPL has been made as the custodian for recovering the LEGACY DUES (DUES PERTAINING TO DVB PERIOD). It is pertinent to mention here that dues of Rs.36,40,535.86 is being reflected against the CA no as DPCL has added the said dues along with accumulation of the arrears."

9. The above submission was duly considered by the Ombudsman at the time of passing the order besides the ruling by the High Court upheld by the Supreme Court in which Supreme Court was not inclined to interfere with the order of High Court.



The Apex Court, however, provided liberty to the petitioner to formulate a scheme non discriminatory in nature for all consumers.

The Court had in its order dated 18.03.2024, *inter alia*, observed and directed as under:

“..... Having heard learned counsel for the petitioner(s) and following the order passed in SLP (C) Diary Nos.35170 and 35605 of 2023 dated 08.01.2024, we are not inclined to interfere in the matter. The special leave petition is hence dismissed. However, liberty is reserved to the petitioner(s) to formulate a scheme, which would be non-discriminatory with regard to all consumers who have dues vis-à-vis the petitioner and which could be in the form of one time settlement for recovery of dues in accordance with law.....” (emphasis added)

It is unfortunate that even after more than one year of the passing of the order by the Supreme Court, no policy has been framed by the Govt. of NCT of Delhi and, therefore, the sufferings of the individual consumer cannot be allowed to continue for indefinite period of time when no discrimination can be made as per the settled law.

10. Regarding non provision of any opportunity to the Applicant to present his case, the record indicates that on 20/21.11.2024 a letter was duly sent to Shri Gaurav Gupta, Sr. Manager (Legal)/Authorized Officer, DPCL, providing an opportunity to make submissions but in response only, a Vakalatnama was received on 16.12.2024 without any submissions on merits. The judgement of the Supreme Court dated 18.03.2024, it is presumed, was well within the knowledge of the DPCL on the date of hearing, but no submission pertaining thereto was also made. Thus, there is no new material, which could not be produced despite due diligence or any error apparent on the face of record, as may necessitate a review.

11. In the absence of any new material submitted by the DPCL, or any error apparent on the face of record, the review petition is not maintainable. As per the settled law, the Discom is directed to issue the NOC as mentioned in the order dated 14.02.2025.


12. In view of the above, the Review Petition is dismissed as devoid of merits. However, in the light of the liberty given by the Supreme Court, it is open for the Govt. of NCT of Delhi to consider framing of policy in due course and consequent to



the policy, the Appellant viz. Amarnath (Lal Bahadur) would be required to adhere by the policy (guidelines) subject to availability of proper records.

13. This order of settlement of grievance in the appeal shall be complied within 15 days of the receipt of the certified copy or from the date it is uploaded on the website of this Court, whichever is earlier. The parties are informed that this order is final and binding, as per Regulation 65 of DERC's Notification dated 24.06.2024.

The case is disposed off accordingly.


(P. K. Bhardwaj)
Electricity Ombudsman
01.04.2025