

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.44/2024

IN THE MATTER OF

Shri Sanjay Barnwal

Vs.

BSES Rajdhani Power Ltd.

Present:

Petitioner: Shri Shekhar Barnwal with spouse, Smt. Ranju Barnwal and Advocate, Shri Akhil Verma.

Respondent No.1: Shri Sanjay Barnwal with spouse Smt. Shivanjani Barnwal.

Respondent No.2: Shri Bijumon George, Ex. Associate, Shri Sudarshan Bhattacharjee, S.M. and Shri Himanshu, on behalf of the BRPL.

Date of Hearing: 09.04.2025

Date of Order: 11.04.2025

ORDER

1. Shri Shekhar Barnwal, S/o late Shri R.P. Barnwal, R/o B-35, Panchsheel Enclave, Delhi – 1100017, has filed a Review Petition through an email dated 20.03.2025/21.03.2025, seeking a review of the order dated 21.02.2025 passed by the Ombudsman in the matter of Shri Sanjay Barnwal vs. BRPL (Appeal No.44/2024).

2. The applicant has stated that the said order was passed one-sidedly without hearing him and based on wrong and distorted facts. It is asserted by the applicant that his parents late Shri R.P. Barnwal and Smt. Vidyawati Devi has severed all relations with Shri Sanjay Barnwal and had disowned him, besides the married daughter Smt. Neena Barnwal from all their moveable and immovable properties. Gift Deed was executed in his name (Shekhar Barnwal) besides a Will and he had proceeded to have mutation of the above property granted in his favour by the MCD in the year 2019 itself vide its letter dated 12.04.2019. His father allowed Shri Sanjay



Barnwal to stay at the first floor of the property and as owner of the property, he (Shekhar Barnwal) had applied for name change of the electricity connection in June, 2022. During their lifetime, on account of constant harassment caused to the parents by Shri Sanjay Barnwal, complaints were made to the Police from time to time, copies of which have been annexed with the application, having various attachments in a total of 176 pages. A suit for permanent injunction against "Sanjay Barnwal" was also filed by the mother, titled as "Vidyawati Devi vs. Sanjay Barnwal". The Applicant has also filed an eviction suit in Delhi High Court bearing no.CS(OS) 294/2024.

3. It may be mentioned in this connection that the order dated 21.02.2025 was passed by the Ombudsman, taking into account the pending matters before the Saket District Court, bearing no.600/2022, a criminal petition under Section 156 (3) of the Cr. P.C. bearing complaint no.1128/2022 pending before the Court of Metropolitan Magistrate as well as Partition suit Test Case 71/2021 by Ms Neena Barnwal (sister of the appellant/applicant) before Delhi High Court, besides suit for cancellation of Gift Deed and Registered Will before the Court. On the date of submission of the request for change of name in the connection, Shri Sanjay Barnwal was in possession of the first floor which is not in dispute. The pendency of the cases has also not been disputed by the applicant.

4. Under Section 114 Code of Civil Procedure (CPC) read with order u/s 47 CPC provisions exist for a review of the judgement, which states as under:

"(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 of 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 to the Court which passed the decree or made the Order."

Accordingly, the review is maintainable only on two grounds:

- i) Discovery of new and important matter which after due diligence was not within the knowledge or could not be produced at the time of hearing or



- ii) On account of some mistake or error apparent on the face of record or for other sufficient reasons.
- iii) Law is settled that Review Petition cannot be used as a guise for appeal.

Regulation 67 of DERC (Guidelines for Establishment of the Forum and the Ombudsman for Redressal of Grievances of Electricity Consumers) Regulations, 2024, provides for a power with Ombudsman to review any order in conformity with the Principles laid down in Section 114/Order 47 CPC.

5. Shri Shekhar Barnwal (applicant) was not a party either before the CGRF or before the Ombudsman. He is, however, aggrieved by the order dated 21.02.2025 of the Ombudsman. The very fact that the pending matters before the Courts were within his knowledge on the date of the application for change of name, aptly makes it clear that complete information was not shared with the Discom on the aspect of challenge to the ownership by the other siblings raising a dispute on the title. In this regard, no new material or error apparent on the face of record has been pointed out.
6. The review petition was taken up for hearing on 09.04.2025. 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.
7. During the course of hearing, Shri Shekhar Barnwal (applicant in review) reiterated his contention as in the review petition. The Advocate submitted that he had the title/ownership documents, duly mutated in 2019 but was not made a party before the CGRF or the Ombudsman and no hearing was provided to him for presenting his case before orders were passed against him. The electricity connection stands transferred at his back without giving him any opportunity. It was emphasized by the Ombudsman that any review petition is limited only on two grounds, i) any error apparent on the face of record, ii) discovery of any new material, which after due diligence could not be produced during the hearing. In accordance with the provisions of Regulation 67 supra as a person aggrieved by the order earlier passed, an opportunity has been provided to the applicant to make his submissions in accordance with the law. Applicant further contended that the documents envisaged in Regulation 10(3) of DERC's Supply Code, 2017, were not part of the application for connection by Shri Sanjay Barnwal in 2004. He further elaborated that the order of the Ombudsman did not comply with the above



regulation. It was clarified that at the time of application by Shri Sanjay Barnwal in 2004, the documents submitted were considered by Discom for release of connection in view of the then prevailing regulations. The factum of continued occupation for over two decades is not in dispute and the order of the Ombudsman for maintaining status-quo was only recognition the above factum.

8. Shri Sanjay Barnwal (Respondent No.1) submitted that he was in possession of the premises from 2004 and continued as such during the last two decades.

9. The Advocate appearing for the Discom (Respondent No.2) submitted that in compliance with the orders passed by the Ombudsman, the status quo as on date of application by Shri Shekhar Barnwal (applicant) in 2022 stands maintained.

10. 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."

11. It is not in dispute that in spite of the mutation and the Will, civil suit is pending before the court of law and the sister of the Appellant has also filed a claim before the Delhi High Court as a test suit, claiming her share in the property. Accordingly, on the date when the applicant (Shri Shekhar Barnwal) applied for transfer of connection, he did not have any undisputed ownership and Shri Sanjay Barnwal (Appellant) was in possession of the first floor of the subject premises for a long period of time and had obtained the electricity connection, in question, in his name in the capacity as an occupant. It is clear that Shri Shekar Barnwal did not disclose these facts before Discom and concealed important facts which were there in his knowledge. Unless the title is settled in a civil court, the person in possession cannot be deprived of his Right to Electricity, is a settled proposition of law.

12. In the absence of any new material submitted by the applicant (Shri Shekhar Barnwal), or any error apparent on the face of record, the review petition is dismissed as devoid of merits.

The case is disposed off accordingly.


(P. K. Bhardwaj)
Electricity Ombudsman
11.04.2025