

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 Petition in Appeal No. 53/2023

IN THE MATTER OF

Ms. Monika Mohale
(Hony. Secretary, Rohit Cooperative Group Housing Society Ltd.)

Vs.

BSES Rajdhani Power Limited

Present:

Petitioner: Shri Yashvir Singh, Sr. DGM, Shri Deepak Narway, DGM,
Shri Sudarshan Bhattacharjee, Senior Manager and
Shri Shreyek Gupta, Advocate, on behalf of BSES-BRPL

Respondent: Ms. Monika Mohale along with Shri Satyender Kumar and
Shri Diwakar Awasthi, Advocates

Date of Hearing: 05.06.2024

Date of Order: 06.06.2024

ORDER

1. Shri Dipankar Majumdar, Additional Vice President, BRPL, has submitted a review petition dated 30.04.2024, along with an application for condonation of delay for review of the order dated 28.03.2024 passed in Appeal (No.53/2023) in the matter of Ms. Monika Mohale (Hony. Secretary, Rohit Cooperative Group Housing Society Ltd.) vs. BRPL.

2. The review petition 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.

3. While submitting the chronology of events including payment towards estimated cost to be borne by the Society as well as DVB share on the basis of the Scheme prepared during 1998-1999, the petitioner stated that a scheme was envisaged for electrification of Rohit Cooperative Group Housing Society with installation of two 630 KVA transformers in accordance with the Office Order dated



12.12.1995, issued by Delhi Electricity Supply Undertaking (DESU). The second transformer was proposed to be installed only when the first transformer gets loaded at least 70% to save investment as well as iron loss of second transformer. It has been averred by the Discom that they could not violate the mandate provided in these guidelines dated 12.12.1995 and that at various stages, the Society was informed accordingly. Further the cost of one transformer was Rs.5,79,600/- and therefore the demand of interest i.e. sum of Rs.14,66,082/- or Rs.11,59,200/- was unjustified. The Complainant approached the Consumer Forum after 24 years of the Scheme. Further, the submission made earlier in respect of the outages of over 12 hours have been referred to with a prayer to pass the orders, i) to stay the operation of the order dated 28.03.2024 pending the adjudication of the review petition, ii) to pass such order as deemed fit.

4. The review petition was admitted and taken up for hearing on 05.06.2024. During the hearing, the petitioner (Discom) was represented by its authorized representatives and Ms. Monika Mohale, the Respondent (Honorary Secretary, Rohit CGHS Ltd.) was present along with Shri Satyender Kumar and Shri Diwakar Awasthi, advocates.

5. During the course of hearing, Advocate appearing for Discom, reiterated the objections/clarifications as stated in the review petition. Advocate further objected to the submission of the Appellant with respect to outage in 2018 for almost 12 hours. He submitted that the electricity was restored within four hours by installing a standby mobile transformer. Now, they have a document to prove that which, they inadvertently could not produce earlier.

6. In rebuttal, the Advocate appearing for the Respondent reiterated Society's submissions as brought earlier in the appeal.

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 28.03.2024.

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."

- 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."

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.

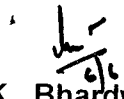
10. In the light of the settled law, during the course of the hearing of the Review Petition, the Discom was specifically required to indicate either (i) error apparent from the face of record or (ii) discovery of any new material, which after due diligence was not available on the date of hearing, as forming grounds for review. The document which was not produced "inadvertently" on the day of hearing of original appeal carries no weight in the review petition and the document produced now could be considered as an after thought which cannot be examined at this stage. The petitioner (Discom) should have done due diligence at the stage of hearing as the document was in possession of petitioner (Discom). All of the objections by the petitioner had already been dealt in the order passed on 28.03.2024.

11. Regarding the emphasis on the DESU's order dated 12.12.1995, being binding on Discom, it has to be read in the background of the conflicting and express Standards of Performance and time schedule for action laid down in the DERC Supply Code and Performance Standards Regulations of 2007 and 2017. The Regulations nowhere refer to the guiding principles of 1995, as basis for action. The relevant provisions of the regulations are:

- (a) The DERC (Supply Code and Performance Standards) Regulations, 2007, Serial No. 3 of Schedule III.
- (b) The DERC (Supply Code and Performance Standards) Regulations, 2017, Serial No.2 (iii) of Schedule – I.
- (c) Regulation 21 of DERC supply Code 2017.



12. Since the Discom has failed to adduce any material, as may warrant a review of the order earlier passed, the review petition is dismissed as devoid of merit. Petitioner (Discom) is required to comply with the order dated 28.03.2024 in next 15 (fifteen) days and a compliance be sent accordingly.


(P. K. Bhardwaj)
Electricity Ombudsman
06.06.2024