



**Delhi Electricity Regulatory Commission**  
**Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi - 17**

No. F. 11(1322)/DERC/2015-16/C.F.5083

**Petition No. 95/2015**

**In the matter of:** Application for Reconsideration/ modification/ review/ withdrawal/ clarification of directions passed by Delhi Electricity Regulatory Commission vide order dtd. 29.09.2015 on the Annual Revenue Requirement (ARR) petition filed by TPDDL for FY 2015-16.

DVB Engineers Association (Recognised)  
Through : its General Secretary'  
D-3, Vikas Puri,  
New Delhi 110 018

....Petitioner

**Petition No. 96/2015**

**In the matter of:** Application for Reconsideration/ modification/ review/ withdrawal/ clarification of directions passed by Delhi Electricity Regulatory Commission vide order dtd. 29.09.2015 on the Annual Revenue Requirement (ARR) petition filed by TPDDL for FY 2015-16.

Delhi State Electricity Workers Union,  
Through : its General Secretary  
L-2, Main Road, Brahm Puri,  
Delhi 110 094

....Petitioner

**Petition No. 97/2015**

**In the matter of:** Application for Reconsideration/ modification/ review/ withdrawal/ clarification of directions passed by Delhi Electricity Regulatory Commission vide order dtd. 29.09.2015 on the Annual Revenue Requirement (ARR) petition filed by TPDDL for FY 2015-16.

Mr. Rajan Gupta  
Former Member  
Delhi Electricity Consultative Council  
(Govt. of Delhi)  
Address 355, Udyan, Narela,  
Delhi 110 040

....Petitioner

**Coram: Sh. B.P. Singh, Member**

**ORDER**

(Date of Order: 31.10.2017)

1. The Instant Review Petitions have been filed by M/s DVB Engineers Association (Recognized), M/s Delhi State Electricity Workers Union and Mr. Rajan Gupta for the Review of the decision of the Commission on the issue of framing of Regulations to regulate Pension Trust. The Petitioners

have also made request that the Commission may direct DISCOMs to provide fund for the requirement for payment to the Pension Trust.

2. The Interim Applications for exemption of fees filed along with Review petitions have been allowed in public interest.
3. Since, identical issues have been raised in the three separate Review petitions the Commission therefore, heard these three Review petitions together and is passing a common order in these Review petitions.
4. The Review petitioners have made following submissions for review of the order of the Commission;

(A) There has been manifest error of facts by the Hon'ble Commission while relying upon the judgment to Mahendra Gupta & others vs. DERC, Appeal No. 238 of 2013 which relates to payment of pension to an optee of voluntary retirement under Rule 48 A CCS (Pension) Rules 1972. The judgment of Mahendra Gupta relied upon by the Hon'ble Commission having altogether different facts speak itself of an error on the face of the record thus needs review as admissible under the law on the following grounds:

- (i) Because subsequent contributions from the date of unbundling i.e. 01.07.2002 have to be made to the Pension Trust by the successor entities of DVB as per Transfer Scheme, Reforms Act Tripartite Agreement. (DERC order dated 29.09.2015 (Para 2.60) & SC Judgment dated 03.05.2010; NDPS Vs. GoNCTD);
- (ii) Hon'ble Commission under Section 181 of the Electricity Act, 2003 and identical Section 61 of the Delhi Electricity Reforms Act, 2000 are delegated with all powers; the decision making and regulation-making functions to carry out purpose of the Act. (Supreme Court on PTC of India vs. CERC) (Appellate Tribunal for Electricity (APTEL) IA No. 127 of 2013 in DFR No. 2547 of 2012-NDPL vs. DERC; Order dated 03.05.2013);
- (iii) Hon'ble Commission has already made provisions in the ARR of the successor entities on ad-hoc basis of Rs. 150 Cr., Rs. 160 Cr. And Rs. 400 Cr., Rs. 470 Cr. And Rs. 573.23 Cr. In the Tariff Order of FY 2011-12, FY 2012-13, FY 2013-14, FY 2014-15 and FY 2015-16 respectively for passing on to the Pension Trust (DERC Order dated 29.09.2015)

(APTEL's Judgment dated 01.02.2016 in Appeal No. 255 of 2013; DTL vs. DERC; Para 18.1);

- (iv) The amounts allowed to the Pension Trust in the Aggregate Revenue Requirement (ARR); FY 2011 to 2016 of the successor entities by the Hon'ble Commission have been factored in their ARR and are pass through. (DERC Order dated 29.09.2015 (Affidavit in APTEL by DERC in Appeal No. 281 of 2015);
  - (v) Hon'ble Commission's decision to contribute to pension fund a lump-sum amount of Rs. 400 crore in the ARR is found justifiable in Appeal No. 255 of 2013; DTL vs. DERC (Para 60.3; APTEL Judgment);
  - (vi) APTEL's judgment of Mahendra Gupta & Ors. Vs. DERC, being a service matter of an employee has no application in the case of liability of Pension Trust by the successor entities of DVB under the Reforms Act, Transfer Scheme & Tripartite Agreement; and
  - (vii) Hon'ble Commission's decision in the ARR order dated 29.09.2015 that "it would therefore be appropriate that the DISCOMs provide for funding for the liabilities of the retired/to be retired employees under their control in their respective ARRs from FY 2016-17 (Para 2.66)
- (B) For the appreciation of the Hon'ble Commission and to find out the nature of controversy some facts and provision of law, Rules, Agreement etc. on the record would be necessary.
- (i) a. **'Request for Qualification'(RFQ)** for purchase of 51% equity in the three DISCOMs was issued on 15<sup>th</sup> February, 2001 by the Department of Power, GNCTD, containing eligibility criteria and other terms and conditions of privatization of Delhi Vidyut Board (DVB). Privatization in DVB was offered to private companies as a going concern on Business Valuation Method (BVM), transferring all the past, present and future liabilities including that of existing employees (24634 nos.) as well as retiree's (9200 nos.) as on 01.01.2000. The Tripartite Agreement dated 28.10.2000 entered between GNCTD, DVB and Joint Action Committee of employees was part of the bid documents attached as Annexure-5 to the RFQ.

b. That **Request for Proposal** (RFP) at para 19.8, provides as under:

**It is a condition of the bid that the bidders accept the documents (including the Tripartite Agreements) and agree to be bound by the terms and conditions therein. Government shall have no obligation to the bidders to discuss or negotiate any agreement or terms thereof either before or after the submission of the bids.**

c. "**Information Memorandum**" This document dated 22<sup>nd</sup> November, 2001 was issued by GNCTD to the successful bidders; Chapter 7 of Information Memorandum provides employees details and Actuarial Valuation of the Fund estimated by GNCTD which states as under:-

"As indicated in the tables above, the total terminal benefit liability of DVB has been estimated as Rs. 1329 crores as on March, 31, 2001. The unfunded portion of the liabilities is hence estimated at Rs. 887 crores."

(ii) That clause 3 & 3 (h) of the Tripartite Agreement 2000 states as under:-

*"3. Now therefore, in consideration of the promises and mutual conditions set forth herein, it is agreed that in the event of reorganization of DVB into two or more corporate entities and disinvestments of any such entities of GNCT of Delhi and the DVB hereby guarantee as follows:*

*(h): The existing welfare benefits to the retired employees shall continue. All obligation in respect of payment of pension, retirement benefits including provident fund, superannuation pension, encashment of leave, gratuity, LTC, Electricity Concession, Medical benefits, DA and benefits available to the present SC, ST, OBC and other employees, who have retired and who are going to retire from the services of the Board before the date of restructuring of DVB shall be the responsibility of the Corporate entities and the Trust and guaranteed by the Government of NCT of Delhi."*

(iii) **Delhi Electricity Reforms Act 2000 (Reforms Act)** was enacted to bring reforms in Power Sector for taking measures conducive to the development in an efficient manner in the NCT by restructuring Delhi Vidyut Board. The Act clearly provided safeguards for the employees of the erstwhile DVB. The relevant portion of the provisions of the Delhi Electricity Reforms Act, 2000, are reproduced herein under;

**Section 9(2):** The Commission may, by notification in the official Gazette, make Regulations not inconsistent with the Act and the Rules made there under for discharging its functions.

**Section 16(1):** The Government may by a transfer scheme provide for the transfer of the personnel from the Board to a company or companies established as the case may be, under section 14 and distribution companies on the vesting of properties, rights and liabilities in a company or companies established, as the case may be, under section 14 or the distribution companies.

**Section 16(2):** Upon such transfers the personnel shall hold office in the transferee company on terms and conditions that may be specified in the transfer scheme such, however, to the following, namely:

(a) That the terms and conditions of the service applicable to them in the transferee company shall not in any way be less favorable than or inferior to those applicable to them immediately before the transfer;

(b) That the personnel shall have continuity of service in all respects; and

**(c) That the benefits of service accrued before the transfer shall be fully recognized and taken in account for all purposes including the payment of any and all terminal benefits.**

**Section 61(1):** The Commission may by notification in the official Gazette, make regulations consistent with this Act and the rules made there under **to carry out the purposes of this Act.**

**Section 61(2):** In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

(n) any other matter which is to be, or may be, prescribed or in respect of which provision is to be made by regulations.

(iv) **The Electricity Act, 2003:**

**Section 181: (1)** The State Commission may, by notification, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act.

**(2)** In particular and without prejudice to the "generality of the power" contained in sub-section (1), such regulations may provide for all or any of the following matters, namely:-

.....  
(zp) any other matter which is to be, or may be, specified.

(v) **Delhi Electricity Reforms (Transfer Scheme) Rules 2001:** These Rules were notified by the Government on 20.11.2001 **in consultation with the DISCOMs** under the provisions of Reforms Act 2000 and were amended on 26.06.2002. However, Rules were made effective on 01.07.2002 vide GNCTD notification dated 26.06.2002. The relevant provisions of the scheme are as under:

**Rule 2(s) "tripartite agreement"** means the agreements between-The Government, the Board and the Delhi Vidyut Board Joint Action Committee executed on 28<sup>th</sup> October, 2000 and notified vide notification no. F.11(82)/2000-EB/990 dated 16<sup>th</sup> Jaunary, 2001;

Rule 6(8) : Subject to sub-rule (9) below, in respect of all statutory and other schemes and employment-related matters, including the provident fund, gratuity fund, pension and any superannuation fund or special fund created or existing for the benefit of the

personnel and existing pensioners, the relevant transferee shall stand substituted for the Board for all purposes and all the rights, Powers and obligations of the Board in relation to any and all such matters shall become those of such transferee and the services of the personnel shall be treated as having been continuous for the purposes of the application of this sub-rule.

**Rule 6(9):** The Government shall make appropriate arrangements as provided in the tripartite agreements in regard to the funding of the terminal benefits to the extent it is unfunded on the date of the transfer from the Board. Till such arrangements are made, the payment falling due to the existing pensioners shall be made by the TRANSCO, subject to appropriate adjustments with other transferees.

**(vi) Powers of the Hon'ble Commission to frame Regulations under DERA 2000.**

In IA No. 127 of 2013 in DFR No. 2547 of 2012- NDPL vs. DERC Order dated 03.05.2013; Hon'ble APTEL has held as under:-

*40. It cannot be disputed that the Delhi Commission has got the powers to frame the Regulations under the Delhi Electricity Reforms Act, 2000, prior to Act, 2003.*

*41. Under Section 61 of the Delhi Electricity Reforms Act, 2000, powers has been conferred on Delhi Commission to make Regulations.*

**(vii) Supreme Court on Pension Trust**

That the obligation of payment of pension and terminal benefits to the pensioners of erstwhile DVB is that of respective transferee companies was settled by Hon'ble Supreme Court in Civil Appeal No. 663 of 2004; Kuldeep Kumar vs. DPCL & Ors. Vide judgment dated 11.01.2010 and Civil Appeal No. 4269 of 2006 and 4270 of 2006; North Delhi Power Limited vs. GNCTD and BSES Rajdhani Power Limited &

Ors. Vs. GNCTD, vide **Judgment dated 03.05.2010 (2010 SCCL.Com)**

(viii) In support of the contention that Hon'ble Commission has ample powers to frame Regulations for Pension Trust the following judgments are being relied upon.

**a. PTC India Ltd. Vs. CERC [(2010) 4SCC 603]:**

**2003 Act contemplates that** under Section 181, the State Commission can make regulations consistent with the Act and the Rules to carry out the provisions of the Act. The rules and regulations have to be placed before the State Legislatures, as the case may be, under Section 182. The State Legislatures has the power to modify the rules/regulations. A holistic reading of the 2003 Act leads to the conclusion that regulations can be made as long as two conditions are satisfied, namely, that they are consistent with the Act and that they are made for carrying out the provisions of the Act.

**It is clear from above that rule making powers enumerated under Sections 181(1) of the 2003 Act that there is a general delegation of power to make rules to carry out the provisions of the 2003 Act by the State Commission. On the analysis of various sections of the 2003 Act, it is clear that the decision-making and regulations-making functions are both assigned to the State Commission. Law comes into existence not only through legislation but also by regulation and litigation. (It is humbly submitted that in the present case the same analogy applies under Section 61 of the Reforms Act, 2000).**

**b. Mahendra Gupta & Others vs. DERC:**

In this case there was dispute between individual seeking voluntary retirements under Rule 48A of CCS (Pension) Rules 1972 and Pension Trust for release of pension for which admittedly the Hon'ble Commission have no jurisdiction under the Act. In the Affidavit dated 04.02.2016 (written submission) filed on behalf of Hon'ble Commission (Respondent No. 1) in the Appeal No. 281 of 2015; TPDDL Vs. DERC before the APTEL it is stated as under:-



**“7. It is humbly submitted that the Commission’s consistent stand has always been that whereas it does not have the competence to adjudicate service disputes, it is required to ensure that the funds for the Pension trust are factored into the ARR of the DISCOM’s.**

It is submitted that this Hon’ble Tribunal after a detailed judgement in Mahendra Gupta (Supra) case had settled the controversy by upholding the order of the Answering Respondent in toto.”

(ix) Whereas the case of Pension Trust no such service dispute exists as in the Mahendra Gupta (Supra) case and therefore the matter pertains only to Rule making powers of the Hon’ble Commission under the Reforms Act 2000, Transfer Scheme 2001 and the Electricity Act 2003 to carry out the purpose of the Act (s) while ensuring that the funds for Pension Trust are factored into the ARR of the DISCOM’s.

(x) The LPA No. 562 of 2013; TPDDL Vs. Rosy Jain & Ors. along with LPA No. 370 of 2015; TPDDL Vs. Mahendra Gupta was decided by the Hon’ble Delhi High Court vide its judgment dated 17.03.2016, wherein it was decided by the Hon’ble Court that Pension Trust shall process and disburse the payment to those opting voluntary retirement. The said judgement was further clarified by the Division Bench of Delhi High Court vide order dated 31.05.2016.

(xi) In view of the above, it is humbly submitted that the case of Mahendra Gupta & Othrs vs. DERC has no application in the present facts of the case when the Hon’ble Commission in various tariff orders after consideration of relevant provisions of law/judgements has recognized the right of DVB Pensioners against the successor companies and allowed payment of Rs. 150 crores, Rs. 160 crores, Rs. 400 crores, Rs. 470 crores and Rs. 573.23 crores in FY 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16 respectively factored in the ARR of the successor entities.

### **ANALYSIS AND ORDER**

5. The review Petitioners have sought review on the issue that the Commission may initiate proceedings for framing Regulations under the Provisions of Delhi Electricity Reforms Act, 2000 and the Electricity Act,

2003 for payment of pension and terminal benefits by the Pension Trust, established by GoNCTD for the employees and pensioners of erstwhile DVB.

6. The roles and responsibilities entrusted to the Commission under the Delhi Electricity Reforms Act, 2000 and the Electricity Act, 2003 are largely similar. However, so far as the Regulation making power is concerned under sub-section (n) of 61 of Delhi Electricity Reforms Act, 2000, the Commission was given residuary powers and it was provided that it may make Regulations on any other matter which is to be, or may be, prescribed or in respect of which provision is to be made by Regulations. In the 2003 Act, Regulation making power is prescribed under section 181 and it mandates that the same shall be exercised in conformity with the Act as well as the rules and for carrying out the purposes of the Act.
7. To reiterate, the regulation making power has to be exercised strictly in consonance with the object and reasons of the creation of the Commission body and the subject matters mentioned under the statutory scheme. Lastly, the section 181 (zp) of the 2003 Act, has a narrow scope and requires that Regulation may be made on any such further matter '*is to be, or may be, specified.*'
8. It is only upon such specific direction by the relevant authority under section 181 (zp) of the 2003 Act that the Commission can be empowered to assume and exercise jurisdiction to make Regulations on matters not already mentioned under section 181. However, till such time the same does not happen, the Commission cannot exercise such a jurisdiction.
9. Thus, keeping in view the objects and reasons with which the Commission has been created under the statute and the various other provisions which nowhere entrust the Commission any matter related to either the Pension Trust in particular or service matters in general, the Commission cannot frame regulations with regard to Pension Trust.

10. Keeping in view the foregoing factors, the Commission is of the considered view that it cannot enter into the realm of making Regulations with regard to Pension Trust.

11. Further, in respect of review of order of the Commission it is pertinent to point out that for review of an order the provisions of Order 47 Rule 1 of Civil Procedure Code are applicable which is as under:

***"1. Application for review of judgment.- (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, or 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 judgment to the Court which passed the decree or made the order."*

12. The above mentioned provisions of Civil Procedure Code mandates that Court of review may allow a review only on three specific grounds which are as under:-

(i) Discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the aggrieved person or such matter or evidence could not be produced by him at the time when the order was made; or

(ii) Mistake or error apparent on the face of the record; or

(iii) For any other sufficient reason which is analogous to the above two grounds.

13. The Commission has examined the contentions raised by the review petitioners in depth and it is observed that the petitioner could not establish to place either a new fact or to demonstrate an error apparent on the face of record. Neither the petitioner was able to cite any sufficient reason for review of the order. Thus, the Commission is of the considered view that none of the conditions stipulated for review are satisfied and

therefore the review petitions need to be dismissed at the admission stage itself.

14. In view of the above the review petitions are dismissed at the admission stage itself.
15. Ordered accordingly.

**Sd/-**  
**(B. P. Singh)**  
**Member**