

DELHI ELECTRICITY REGULATORY COMMISSION

Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 17

F.11 (1411)/DERC/2016-17

Review Petition No.40/2016

In the matter of: Review Petition against the order dated 17.06.2016 in Petition No. 47/2015 – Sandeep Tiwari vs. BRPL

In the matter of:

BSES Rajdhani Power Ltd.
Through its: **CEO**
BSES Bhawan
Nehru Place
New Delhi-110019

...Petitioner

Coram: Sh. B.P. Singh, Member

Appearance:

1. Shri Manish Srivastava, Advocate for Respondent;
2. Shri S. Bhattacharya, DGM Enforcement, BRPL;
3. Shri Aruj Mathur, Manager, BRPL.
4. Shri Narendra Nagar, Advocate for the Complainant;

ORDER

(Date of Hearing: 08.02.2018)

(Date of Order: 23.02.2018)

1. The instant review petition has been filed by M/s BSES Rajdhani Power Ltd. against the Order dated 17.06.2016 of the Commission in Petition No. 47/2015 – Sandeep Tiwari vs. BRPL, whereby penalty was imposed on the Petitioner for violation of certain Regulations.
2. The Petitioner has submitted that there is an error apparent on the fact of the record pertaining specifically to that the judgement of the Hon'ble High Court of Delhi passed in **Smt. Kanta Sharma vs. BSES Rajdhani Power Ltd. (WP(C) No. 1712/2011)** was not considered by the Commission, wherein while discussing the provisions of Regulation 52 and Regulation 40 of the DERC Supply Code, 2007, it has been clearly laid down that there is no Regulation whereby any liability has been fastened upon the Petitioner herein to test the meter in the presence of the consumer. Further with respect to Regulation 52, it has been clearly laid down that inspection does not necessarily precede testing and an unscrupulous consumer cannot be permitted to evade the

charge and liability of theft if during testing, conclusive evidence of meter tampering is detected.

3. The grounds on which review can be sought are enumerated in Order 47, Rule 1 CPC, which are as under:
 - i. Discovery of new and important matter or evidence, or
 - ii. Mistake or error apparent on the face of the record, or
 - iii. Any other sufficient reason.

4. The Commission observed that in the instant Review Petition, no new facts of law has been produced neither there is any mistake or error apparent on the face of the records. The judgment of the Hon'ble High court of Delhi passed in **Smt. Kanta Sharma vs. BSES Rajdhani Power Ltd. (WP(C) No. 1712/2011)** was already considered while delivering the Order dated 04.01.2016 and cannot be treated as a new fact or mistake or error apparent on the face of the record. On the judgment of the Hon'ble High court of Delhi passed in **Smt. Kanta Sharma vs. BSES Rajdhani Power Ltd. (WP(C) No.1712/2011)** the Commission had observed that the Regulations should be read as a whole for proper interpretations. Therefore, Regulation 38 (c) has applicability for every type of meter testing. Further the Hon'ble High Court of Delhi has nowhere mentioned that a consumer may not be informed about meter testing. It only says that if he fails to appear on the first date fixed for meter testing, it is not mandatory to inform him about next date of hearing. The Court has held that the process should not be made cumbersome so as to cause delay. It is to be noted that this Commission (Coram: all the three members) in its Order dated 24.06.2015 in the matter of Smt. Kamlesh vs. BYPL (Petition No. 07/2014) has held that:

"The Commission observed that the contention of the Respondent that Regulation 38(C) is not applicable in the instant case is not acceptable. The meter test report has been adduced as an evidence, therefore legal propriety requires that the meter be tested in the presence of the consumer/representative as per the provisions of Regulation 38(C)."

5. Regarding Regulation 52 (x), on the issue of mandatory vs. directory Regulation, it was clarified that a Regulation must be complied with, whether it is mandatory or directory direction. It is not the free will of the Discom to comply or not to comply with the provisions of Regulations. The only point worth consideration is regarding the related consequences when a Regulation is not complied with.

6. The Petitioner has failed to give any other sufficient reason requiring review of Interim order by the Commission, the Review Petition falls short of requirement for a review. Moreover, the Review Petition was filed after the period of limitation for filing a Review Petition i.e. on 20.07.2016 (30 days from passing of the Order excluding time taken to obtain certified copy) and beyond the date of depositing the amount of penalty.

7. In view of the above, the Review Petition is dismissed.
8. Ordered accordingly.

Sd/-
(B. P. Singh)
Member