

DELHI ELECTRICITY REGULATORY COMMISSION

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

F.11 (1372)/DERC/2015-16

Review Petition No.22/2016

In the matter of: Review Petition against the order dated 04.01.2016 in Petition No. 01/2015 - Sarla Devi vs. BSES Yamuna Power Ltd.

In the matter of:

BSES Yamuna Power Ltd.
Through its: **CEO**
Shakti Kiran Building,
Karkardooma
New Delhi – 110092

...Petitioner

Coram: Sh. B.P. Singh, Member

Appearance:

1. Shri Manish Srivastava, Advocate for Respondent;
2. Shri I U Siddiqui, Legal Officer, BYPL.
3. Shri Munish Nagpal, Sr. Manager, BYPL;

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 Yamuna Power Ltd. against the Order dated 04.01.2016 of the Commission in Petition No. 01/2015 - Sarla Devi vs. BSES Yamuna Power Ltd. 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 face 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 with respect to the aspect of the alleged violation of Regulation 52(viii) read with Regulation 38 (C) of the DERC Supply Code, 2007, wherein 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; and secondly with respect to Regulation 53(iv), it has submitted that the calculation done by the Petitioner was in conformity with the formula as mentioned in the Regulations and that the Petitioner in its reply had filed a copy of the detailed bill showing calculation of assessment.

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 53(iv), the Commission had observed that in the LDHF formula as applied by the Petitioner while preparing final Assessment bill dated 09.09.2014, the supply hours per day is taken as 11 hrs. which is not in conformity with the parameters given in Annexure XIII of the Regulations.

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 25.02.2016 (30 days from passing of the order excluding time taken to obtain certified copy) and beyond the date of depositing the amount of penalty. However, keeping in view that the wrong application of LDHF formula has not resulted in any loss to the

consumer, the penalty imposed for violation of Regulation 53(iv) is waived off.

7. In view of the above, the Review Petition is dismissed. The Petitioner is directed to pay the balance penalty of Rs. 30,000/- within a period of one week.
8. Ordered accordingly.

Sd/-
(B. P. Singh)
Member