

**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. 33/2022**

(Against the CGRF-BYPL's order dated 06.10.2022 in Complaint No.142/2022)

**IN THE MATTER OF**

Shri Ajay Jain

Vs.

BSES Yamuna Power Limited

Present:

Appellant: Shri Ashish Jain, counsel for Appellant

Date of Hearing: 08.02.2023

Date of Order: 09.02.2023

**ORDER**

1. Shri Ajay Jain owner of 36/1A, Dilshad Garden, Industrial Area, Shahdara, Delhi-110095, submitted an appeal against the CGRF-BYPL's order dated 06.10.2022 in Complaint No.142/2022, in respect of refund of excess amount charged under wrong tariff (non-domestic). The CGRF had dismissed his plea being non-maintainable.

2. The matter was heard on 22.12.2022 and in the order dated 26.12.2022, the Ombudsman directed as under:

- Respondent to refund the extra charges levied upon the Appellant w.e.f. 15.06.2020 for the period the Appellant had valid license as per Clause 17 (6) (iv) of DERC's Supply Code, 2017.
- No interest would be charged as claimed by the Appellant.



- Respondent to devise a mechanism to notify the industries, especially in approved Industrial Areas about the mandatory requirements including submission of valid licence at least once a year, in accordance with the provisions of 17 (6) (ii) of DERC (Supply Code and Performance Standards) Regulations, 2017.

3. Shri Ajay Jain through his advocate Shri Ashish Jain has submitted a Review / Revision Petition dated 19.01.2023 in which he has mentioned that although a limitation period of three years is laid down and his request was made on 16.07.2021, he has been granted benefit of refund only from 15.06.2020 for 18 months instead of 36 months, as sought in the appeal. He has, therefore, prayed for a review / revision of the order for allowing maximum possible refund in his case.

4. The power for review of its orders by the Ombudsman vests in regulation 33(1) of the DERC (Forum for Redressal of Grievances of the Consumer & Ombudsman) Regulations 2018, which reads as under:-

*"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 record, may apply for a review of such order, within 30 days of the date of the order, as the case may be to the Ombudsman."*

5. The Supreme Court of India, while considering the Power of Review under the Civil Procedure Code has observed as under:

- In the case *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.'*"

- In case of *Aribam Tuleshwar Sharma vs. 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."*

6. The Review Petition along with the submissions made by the Appellant has been carefully considered.

7. During the hearing of the Review Petition on 08.02.2023, attention of the advocate was invited to Regulation 33 (1) of the DERC (Forum for Redressal of Grievances of the Consumer & Ombudsman) Regulations 2018, which inter-alia provides for a review only on the basis of an error apparent on the face of record or discovery of new material which after due diligence could not be produced at the time of hearing. The advocate conceded that neither there was any error in the order nor any new material to be produced.


8. The Appellant has relied upon the provision of the Limitation Act for making out a case that in the light of the provisions of limitation allowing filing of a suit for recovery of money within three years, his claim for recovery of excess money paid for 36 months is maintainable. Filing of a suit in accordance with the limitation period laid down is one aspect of the matter and the admissibility of claim is another aspect. There cannot be a confusion in this regard. The Supreme Court of India has in the matter *Mahabir Kishore & Others vs. State of MP*, decided on 31.07.1989, laid down a limitation period of three years for filing a suit for refund of money paid by mistake of Law. However, The power of the



Ombudsman is restricted by DERC (Supply Code and Performance Standards) Regulations, 2017 in Regulation 17 (5) "Change of category on the request of consumer" and 17 (6) "Suo-motu reclassification of consumer category by the Licensee" which *inter-alia* limit the recovery of the arrear or excess charges upto 12 months. Thus, the claim in the ordinary course is to be limited to 12 months. Taking into account the Provision of the Law and the Proviso to para 6 of the Electricity Tariff Schedule 2021-22, appropriate orders were passed by the Ombudsman vide order dated 26.12.2022, allowing relief from the effective date of renewal of license.

9. In the present case, the Appellant has neither pointed out any error apparent on the face of record nor submitted any material which after due diligence could not be produced at the time of the hearing.

10. The ingredients laid down in Regulation 33 (1) supra are, therefore, not satisfied as there are no grounds for Review / Revision of the order. Hence, the request of the Appellant is, therefore, dismissed being without merit.

  
(P.K. Bhardwaj)  
Electricity Ombudsman  
09.02.2023