

**BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY  
COMMISSION, SHIMLA**

In the matter of:-

M/s Radiant Castings Ltd.  
Khasra No. 288/2  
Village Jharmajri, PO Barotiwala  
Tehsil Baddi, Distt. Solan

.....**Petitioner**

Versus

1. The HP State Electricity Board Ltd.  
through its Executive Director(Personnel)  
Kumar House, Shimla-171004
2. The Addl. Superintending Engineer,  
Electrical Division, HPSEBL  
Baddi (HP)

.....**Respondents**

Review Petition No. 37 of 2018

(Decided on 06<sup>th</sup> Sept., 2018)

**CORAM:**

S.K.B.S NEGI  
**CHAIRMAN**

BHANU PRATAP SINGH  
**MEMBER**

Counsel:-

for petitioner:

Sh. P.C. Diwan  
Advocate

for respondent No.-1& 2:

Sh. Surinder Saklani  
Standing Counsel a/w  
Sh. Kamlesh Saklani  
(Authorized Representative)

**ORDER**

(Last heard on 1<sup>st</sup> Sept., 2018 and Orders reserved)

M/s Radiant Castings Ltd. which is a company registered under the Companies Act, having its registered office at L-7, Green Park Extension, New Delhi, running an industrial unit located at Village Jharmajri, P.O. Barotiwala, Tehsil Baddi, Distt. Solan (HP) (hereinafter referred as “the petitioner”) through Sh. Jitendra Kumar Gupta, its Works Manager and authorised signatory has moved this petition seeking review of this Commission’s Order dated 30.06.2018, passed in petition No. 22 of 2018.

2. The petitioner asserts that the impugned Order dated 30.06.2018 deserves to be reviewed because the respondents could not produce any document to prove that the capacity at Barotiwala sub-station, from where the connection was granted to the petitioner, was inadequate or even the petitioner was ever informed about the same. Nor any document was presented to prove that the connection was not given from Barotiwala. The petitioner has submitted documents to prove that the connection was granted from Barotiwala sub-station and the petitioner has paid the entire cost of the estimate as demanded. The respondents had not complied with the Regulations which provide for cap of 3% on the estimated expenditure in regulation 6.2(b) and have not supplied details of the expenditure incurred on the line which was required to be done within 3 months after grant of connection as per Regulations. Further the expenditure up-stream sub-station is not to be recovered from the consumers, and the expenditure has already been recovered through ARR in capital outlay as provided in the Tariff Regulations, 2004. There is no provision to recover pro-rate charges or normative charges and only provision is for recovery of reasonable charges for grant of a particular connection. It is a crystal clear case of violation of rules and regulations and unfair trade practices for which action is required to be taken. Moreover, the order passed in petition No. 94 of 2015 relied upon, is not applicable in this case as it is distinguishable on the ground that when Order 05.12.2015 was passed in that case the clarification dated 02.05.2011 was still in operation, which enabled the Respondent Board to recover pro-rata expenditure on the power system created or to be created from the applicant consumers. The said clarification was quashed by the Hon'ble APTEL on 18.12.2005 and has, therefore, lost effect abinitio.

3. Sh. Surinder Saklani, the standing Counsel representing the Himachal Pradesh State Electricity Board Ltd. (hereinafter referred as "the respondent Board" or "the HPSEBL") submits that this review petition is not maintainable as none of the averments made by the petitioner falls within the parameters under regulation 63 of the Conduct of Business Regulations of this Commission and averments advanced by the petitioner in the present petition clearly demonstrate that the petitioner instead of getting the orders reviewed wants this Commission to undo the detailed Order/Judgment passed by it taking into account all the relevant facts involved in this case and intends to persuade the Commission to pass a fresh judgment in the matter which can only be agitated by way of appeal and is not permissible under powers of review. There is no ambiguity in the impugned order dated 30.06.2018 and hence the same deserves to be

sustained in the interest of public at large and no modification/review, as is being sought by the petitioner, is, thus, warranted.

4. Before proceeding to consider the application for review it must be said, at the outset, that this Commission must adhere to the well settled principles of review. The Commission, therefore, is to spell out the scope of the power of the Commission to review the Order. The scope and authority of review is derived from the section 94(1)(f) of the Electricity Act, 2003 and regulation 63 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005, read with section 114 and Order 47, Rule 1, of the Code of Civil Procedure, 1908 (“CPC”). A person aggrieved by an order, from which no appeal has been preferred or no appeal is allowed, may prefer a review on the following grounds:-

- (a) discovery of new and important matter of evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced at the time when the order was passed or made, or
- (b) mistake or an error apparent on the face of the record, or
- (c) any other sufficient reason.

5. As mistake(s) or error(s) apparent on the face of record cannot be defined precisely and exhaustively and there is an element of indefiniteness inherited in these terms, it is left to the discretion of the Court to determine the same judicially on the basis of facts of the case. However, the error must be one that speaks for itself and is difficult to be ignored. The exercise of power of review is not permissible in the case of an erroneous order so as to render the order as “reheard and corrected”. The law has made clear distinction between what is an erroneous decision and an error apparent on the face of the record. While the first can be corrected by only a higher forum, the later can be corrected by exercise of power of review. A power of review is not to be confused with appellate power which enables an Appellate Court to correct all errors committed by the Subordinate Court.

6. The scope of review has been settled by the **Hon’ble Supreme Court in the case of Parsion Devi V. Sumitri Devi, (1997) 8 SCC 715; Aribam Tuleswar Sharma Vs Aribam Pishak Sharma AIR 1979 SC 1047; Raja Shatrunji V. Mohd. Azmat Azim Khan (1971)2SCC 200; Smt. Meera Bhanja Vs. Nirmala Kumari Choudhury AIR 1995 SC 455**; and has also been followed by the Hon’ble Appellate Tribunal for Electricity in its orders (dated 17.11.2006) in Appeal No.40 of 2006; dated 23.11.2006 in Appeal Nos. 80 to 197 of 2006; and Appeal No.226 of 2006; and dated 31.10.2007 in appeal Nos. 159 of 2005; 162 and 167 of 2006. This Commission has

further followed the verdicts of the Hon'ble Supreme Court and the Hon'ble APTEL in this Commission's decision's dated 4.01.2008, rendered in review petition No. 135/07 – M/s HIM Steels Ltd; V/s H.P. State Electricity Board; dated 2.9.2008 in review petition No. 120 of 2008; dated 24.2.2009 rendered in review petition No. 205/08 – HPSEB V/s Padamvati Steels Ltd. and dated 24.10.2011 in review petition Nos. 81 and 83 of 2011-Government of Himachal Pradesh V/s Himachal Small Power Association and another

7 Relying upon the judgments in the cases of Aribam's (supra) and Smt. Meera Bhanja, (supra) the Hon'ble Supreme Court in the case of Parsion Devi Vs Sumitri Devi (1997(8)SCC 715) has observed as under: -

*“Under Order XLVII, 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 XLVII, Rule 1, CPC. In exercise of the jurisdiction under Order XLVII, 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.”*

8. In the instant case, the petitioner's thrust is to reopen the issues raised in his original petition and he is not questioning the principle that the individual consumer/billing disputes, do not come under section 86(1)(f) of the Act and only the Consumers Redressal Forum has the jurisdiction.

9. To sum up, the power of review, legally speaking, is permissible where some mistake or error apparent on the face of record is found and the error apparent on record must be such an error which may strike one on a mere looking at the record and would not require any long drawn process of reasoning. A review cannot be equated with the original hearing of a case. A review petition has a limited purpose and cannot be allowed to be an appeal in disguise and it cannot be exercised on the ground that decision was erroneous on merits. An erroneous decision cannot be “reheard and corrected”.

In light of the above discussion, this petition is dismissed. No costs.

**BHANU PRATAP SINGH**  
**MEMBER**

**S.K.B.S. NEGI**  
**CHAIRMAN**