

**Before**

**UTTARAKHAND ELECTRICITY REGULATORY COMMISSION**

**In the matter of:**

Application seeking review of the Commission's Order dated 22-12-2006 imposing penalty u/s 142 of the Electricity Act, 2003 for non-compliance of Commission's directions for implementing ToD tariff in the State.

**Coram**

<b>Shri Divakar Dev</b>	<b>Chairman</b>
<b>Shri V.K. Khanna</b>	<b>Member</b>
<b>Shri V.J. Talwar</b>	<b>Member</b>

**Date of Order: 24<sup>th</sup> April, 2007**

**ORDER**

A petition was filed before the Commission by Shri B.M. Verma, S/o Shri Walaiti Ram, R/o 220, Phase-II, Vasant Vihar, Dehradun on 12-01-2007 seeking review of the Commission's order dated 22-12-2006 imposing penalty on him personally for non-compliance of Commission's direction for implementing ToD tariff in the State. The petition has been filed under the provision of Section 94(1)(f) of the Electricity Act, 2003 and Regulations 68 and 74 of UERC(Conduct of Business Regulations), 2004 read with Section 114 of Code of Civil Procedure, 1908.

2. In view of Commission's limited jurisdiction for reviewing its judicial orders as defined in the Civil Procedure Code (CPC), the Commission decided to hear the applicant before taking a view on the admissibility of this said petition. Accordingly the

petitioner was required to appear before the Commission for hearing on 29-03-2007, which he did.

3. Since this application is for review of the order passed by the Commission on 22-12-2006 the powers given by law to the Commission to review its own orders must be examined first. Commission's powers to review its own order are derived from Section 94(1) (f) of the Electricity Act, 2003 and are the same as those conferred on a Civil Court by the Code of Civil Procedure. These have been spelt out in Section 114 of the CPC read with order XLVII. Therefore for this review application to be admitted, it has to meet the requirements of Section 114 and Order XLVII of the CPC. As per these provisions, the grounds on which an order already passed can be reviewed by the Commission are:

- a. If there are mistakes or errors apparent on the face of the record,
- b. On discovery of new and important matter or evidence which after due diligence was not within knowledge or could not be produced at the time of the order,
- c. If there exists other sufficient reasons.

4. Given this clear position of law as mentioned above, it has to be now seen whether the application under consideration meets all or any of these requirements or not. Applicant in its petition dated 12-1-07 has only mentioned the facts of the case and his reasons for not implementing the Commission's categorical directions. The applicant has failed to bring to the Commission's notice any mistake or error in the order which is apparent on the face of the record. He has also not claimed discovery of any new matter or evidence which could not be produced before passing of the final order. The Commission's Order dated 22-12-2006 was passed only after careful consideration of all aspects of the matter including the explanation offered by Shri Verma when he was given an opportunity to do so. Such being the case the present application fails to meet the essential requirements spelt out in order XLVII (a) & (b) of the CPC.

5. It may be pointed out here that Hon'ble Supreme Court and Hon'ble High Courts have also held that review jurisdiction is not a substitute for an appeal and cannot be exercised for reconsideration of issues already decided by a Court in its original order. The error and mistake for correction in review proceeding should be apparent on the face of the record and the same should be self evident. Hon'ble Supreme Court in the case of Lily Thomas Vs. Union of India and others has categorically decided this question leaving no room for further doubts. This position was also reiterated by the Hon'ble Supreme Court in the other matter in State of Haryana Vs. Mohinder Singh.

6. As regard the third ground of review under order XLVII of the CPC namely "for any other sufficient reason", there are no new grounds other than those considered in the original order of the Commission dated 22.12.2006. It is a well settled principle that the expression "any other sufficient reason" will have a meaning analogous to grounds specified immediately before. This position of order XLVII cannot be used to nullify the specific requirements stipulated in the earlier portions of the same provision. In this connection the decision of the Hon'ble Supreme Court, again in the case of Lily Thomas etc. vs. Union of India and others spells out the position unambiguously. In view of this well settled position the scope of the third condition of order XLVII of the CPC that is, "any other sufficient reason", cannot be extended to include all other reasons irrespective of whether they are in conformity with the specific requirements stipulated under order XLVII itself or not. It is clear that the application for review does not meet even this condition.

7. For reason given as above, the application for review dated 12-01-2007 is not maintainable under section 94(1)(f) of the Electricity Act, 2003 read with section 114 and order XLVII of the CPC. The application is accordingly not admitted and stands rejected.

8. Notwithstanding the above legal position, the Commission had tried to ascertain the up to date position of implementation of its original directions which has been filed

by the petitioner through an affidavit dated 12-04-2007. The Commission is extremely disappointed and concerned that notwithstanding its original directions, the penalties imposed vide its orders dated 22-12-2006, the applicant while seeking a review of the said order has still not fully implemented the Commission's directions and the reasons for imposing the penalty on him stand even today.

Sd/-  
**(V.J. Talwar)**  
**Member**

Sd/-  
**(V.K. Khanna)**  
**Member**

Sd/-  
**(Divakar Dev)**  
**Chairman**