

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 53 of 2009**

**In the matter of**  
**Petition filed by Shri Amarjeet R. Upadhyaya seeking review of**  
**Commission's Order dated 15 June 2009 in Case No. 13 of 2009.**

**Shri. V.P. Raja, Chairman**  
**Shri S. B. Kulkarni, Member**  
**Shri. V. L. Sonavane, Member**

Shri. Amarjeet Ramchandra Upadhyaya, Kalyan(W) .....Complainant

V/s

Maharashtra State Electricity Distribution Company Ltd.  
Kalyan Urban Div., Kalyan (W) .....Opponent

**ORDER**

**7<sup>th</sup> December, 2009**

Shri Amarjeet Ramchandra Upadhaya, filed a petition on 28.07.2009 seeking a review of the Commission's Order dated 15<sup>th</sup> June 2009 passed in Case No. 13 of 2009. The present review petition has been filed under the provisions of Regulation 85 of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 against the impugned order dated 15<sup>th</sup> June 2009.

2. The Petitioner has prayed as under:

- a) *“To review the Order dated 15/06/09 in petition no. 13 of 2009 in the interest of justice and therefore allow the petition in toto,*

- b) *For such further reliefs which this Hon. Commission may think fit in the interest of justice,*
- c) *for costs ”*

3. According to the Petitioner, certain errors have crept in the said impugned order, as follows -

- i. There is no provision in the Electricity Act, 2003 (“EA 2003”) and MERC (CGRF&EO) Regulations to enable the Petitioner to take up the issue with the Electricity Ombudsman as to whether the NOC from KDMC as submitted by the Petitioner is sufficient for the purposes of availing electricity connection by him or to take up the issue as to whether that Electricity Ombudsman’s order calls for any change in view of the NOC from KDMC submitted by the Petitioner, or whether the Electricity Ombudsman needs to issue any clarification. Therefore, according to the Petitioner observations made by the Commission at paragraph 7 of the impugned order is not in accordance with the law;
- ii. Furthermore, the EA 2003 gives jurisdiction to the Commission under Sections 129 and 142 to adjudicate on the issues of compliance and non-compliance, and thus also the observation made at paragraph 7 that Commission is not the right forum, is not in accordance with law;
- iii. Exact and positive provisions of requirement of NOC from KDMC for release of electrical connection under BPMC Act 1949, Development Control rules, etc. have not been quoted in the impugned order and also that paragraph 5 of the impugned order has made vague observations in this regard.
- iv. In the absence of the above stipulation at paragraph 8 of the impugned order, it can not be said that release of electricity connection to the premises without NOC/ permission of KDMC is derogatory to laws.
- v. Sec 43(1) of EA 2003 casts a mandatory duty on the respondent to supply electricity to owner or occupier, without any power of refusal.
- vi. Sections 173 and 174 of the EA 2003 which provide for overriding effect of EA 2003 means that Section 43(1) cannot be read only with Section 175 but should be read alongwith these two aforesaid sections.
- vii. KDMC having given their NOC to release supply of electricity to the premises of garage vide letter dated 07-03-09, the petitioner is entitled to receive supply of electricity to the garage and the Distribution licensee is duty bound to release the same.

viii. There is no provision in EA 2003 to refuse electricity supply to the owner or occupier of any premises. Thus, according to the petitioner the impugned order is not in accordance with the provisions of the EA 2003.

4. An admissibility hearing was held on 9<sup>th</sup> November, 2009. The Petitioner was represented by Dr. R. R. Upadhyaya. The Respondent were represented by Shri P. H. Sachdev, Advocate, Shri K. S. Ramteke, Ex. Engineer, MSEDCL, Shri G. T. Pachphole, Dy. Ex. Engineer and others.

The Petitioner submitted that he was asking for electrical connection for the garage which is an authorized construction and it becomes the duty of the Distribution Licensee to provide electric supply on demand. On the point of objection by the Society for usage of the garage for the intended purposes, the Petitioner submitted that the Society, of which he is a member cum shareholder, has no right to raise any objections to the use of the said garage for his intended use of the garage. The Petitioner also submitted that under Section 43(1) of EA 2003, giving connection and supply to the owner or occupier is the duty of the Licensee and the issue of authorized or unauthorized usage of the same is not the concern of the Licensee.

It was submitted by the Respondent that it cannot provide a Commercial category power supply to the 'garage', since the same would be against the law.

5. Having considered the materials placed on record and the oral submissions advanced by the parties, the Commission is of the view that the present Petition seeking review of the Order dated 15<sup>th</sup> June 2009 in Case No. 13 of 2009 requires to be tested against the requirements laid down in Regulation 85 of the Conduct of Business regulations of the Commission. On first principles, a review of any order, direction or decision is permitted, only upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by the applicant at the time when the direction, decision or order was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons. The grounds made out under the petition cannot be considered for the grant of review of the impugned Order, as it is settled law that a review petition has a limited scope. When the matter is to be reheard the appropriate forum is an appellate court and not this Commission under review proceedings. It is also settled law that an error to be a ground for allowing a review must be apparent. Moreover, the grounds raised in the Petition do not establish any mistake or error apparent on the face of the record. It has not been shown that the error is so manifestly patent that it admits of no doubt or dispute. No such error or sufficient reason has been shown which ought to be corrected in review. On the other hand, the contentions placed by the Petitioner for seeking review are actually pointing out that the decision contained in the impugned order is erroneous. The Commission is of the view that correction of erroneous decisions cannot be undertaken in review proceedings. The scope of review does not permit rehearing of the matter and/or passing a fresh decision on the case. A review petition has a limited purpose and cannot be allowed to be an appeal in disguise.

6. In view of the aforesaid observations, the Commission is unable to sustain the contentions of the Petitioner. None of the grounds stated in the Petition can be said to fall within the ambit and scope of Regulation 85. The Commission, therefore, rejects the Petition, with the above observations, since the grounds sought for by the Petitioners are not within the purview of review under the said Regulation 85(a) and consequently, the Review Petition is not maintainable since no grounds for review are made out. Accordingly, the Commission dismisses the present Petition with the aforesaid observations.

Sd/-  
(V. L. Sonavane)  
Member

Sd/-  
(S. B. Kulkarni)  
Member

Sd/-  
(V. P. Raja)  
Chairman



(Sanjay Sethi)  
Secretary, MERC