

**BEFORE THE HARYANA ELECTRICITY REGULATORY
COMMISSION AT PANCHKULA**

Case No. HERC/Review Application 02 of 2022

Date of Hearing : **03.08.2022**
Date of Order : **01.09.2022**

In the Matter of

Review of the Order dated 19.10.2021 passed by this Commission in HERC/PRO – 05/2017 in accordance with Powers vested with the Commission under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 78(1) of (Conduct of Business) Regulations, 2019.

Review Applicant

Sudhir Aggarwal, Secretary, Raisina Aravali Retreat Residents' Welfare association, R/o -G5 (B), Ansal Aravali Retreat, Village-Raisina, Tehsil Sohna, District- Gurgaon.

VERSUS

Respondents:

Dakshin Haryana Bijli Vitran Nigam (DHBVN).

Present:

On behalf of the Review Applicant:

Sh. Kuldeep Kumar Kohli, Advocate

On behalf of the Respondents:

Sh. Sahil Sood, Advocate

QUORUM

Shri R.K. Pachnanda, Chairman
Shri Naresh Sardana, Member

Order

1. The case was heard on 03.08.2022, as scheduled, in the court room of the Commission.
2. At the outset, Sh. Kuldeep Kumar Kohli, counsel for the review applicant pleaded for condonance of delay in filing the instant review application filed on 09.03.2022 against the HERC order dated 19.10.2021 and

requested for condonation of delay of 146 days based upon the judgements of the Hon'ble Supreme Court and submitted that vide Miscellaneous Application No.21 of 2022, the Hon'ble Court has passed the following orders :

“

- I. *The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings.*
 - II. *Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*
 - III. *In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.*
 - IV. *It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”*
3. Sh. Sahil Sood, counsel for the respondent-DHBVN submitted that copy of the review petition has not yet been supplied to them and requested for the direction to supply the same for filing its response. However, Sh. Kohli submitted that a copy of review petition has been submitted to the concerned subdivision office of the respondent and will also supply the same today itself to the opposite counsel.
 4. The review applicant further urged to hear his argument today without written submissions of the other party on the review application and submitted that the Hon'ble Commission may hear his argument today and has no objection in the decision of the issue by the Hon'ble Commission subsequently after filing of the written submissions by the respondent. He expressed his inability to attend the hearing again for such trivial work.
 5. The arguments made by the review applicant are as under:
 - a) That the findings so recorded by the Hon'ble Commission, in the order dated 19.10.2021 are beyond the facts, pleadings and the scope of

the case. As a result of the observations recorded and conclusions the Hon'ble commission, in its order under review, have travelled much beyond the scope of the case and the relevant Rules, Regulations and procedure applicable.

b) That the factual status of the eight cases, based on which, the order date 19.10.2021 has been passed by the Hon'ble Commission under instant review, is as under:

i. CWP No. 102386 of 2020 titled Ansal Retreat Resident Welfare Association Vs State of Haryana and Another-

To please the Hon'ble National Green Tribunal (NGT), before the next date of hearing, the Deputy Commissioner issued orders for the Change of Girdhawari being order dated 11.06.2020 and the same was assailed through a CWP No. 10286 of 2020 and a stay was granted by the Hon'ble High Court of Punjab and Haryana.

“Vide order dated 20.07.2020, it was held that – in the meantime, operation of the impugned order shall remain stayed.”

OA No. 4/2013- Suo motu proceedings were initiated by the Hon'ble NGT on 07.01.2013 based on the news item in Times of India dated 07.01.2013 titled “How private players grabbed forest land in the Aravali”.

This matter was taken up on 17.03.2020 and observed by the Hon'ble NGT as under:

“Even though there is no justification as more than one year and four months have gone by after order of this Tribunal and it is not clear whether any tangible steps have been taken, we grant last opportunity for furnishing the report before the next date, failing which coercive measures may have to be taken for the compliance of orders of this Tribunal under Section 25 of the NGT Act, 2010 read with Section 51 CPC, which may include direction for civil imprisonment of the concerned defaulting officers. We have noted that there is no appearance for the State of Rajasthan nor any compliance report.”

To please the Hon'ble NGT, before the next date of hearing, the Deputy Commissioner issued orders for the Change of Girdhawari by order dated 11.06.2020. The same order was assailed through a CWP No. 10286 of 2020 and a stay was granted by the Hon'ble High Court of Punjab and Haryana.

The Deputy Commissioner, Gurugram, further, in order to please the Hon'ble NGT, because of the strictures passed against him by the Hon'ble NGT, advised the Municipal Corporation, Sohna to issue notices for demolition. The Municipal Corporation, Gurugram in turn issued order dated 23.05.2020 and 25.05.2020 for demolitions, the validity of which was assailed before the Hon'ble High Court of Punjab and Haryana in CWP No. 7719 of 2020 and a stay was granted

against the demolition by the Hon'ble High Court of Punjab and Haryana. All these orders issued by the Deputy Commissioner, under his instructions were against the principles of natural justice and were without any logic and hence were challenged before the Hon'ble High Court of Punjab and Haryana by filing different writ petitions.

- ii. CS/140/21 Smt. Anita Budhwar Versus State of Haryana and Others, CS/117/20- Sudhir Agarwal Versus State of Haryana and Others, CS/102/20- Promod Goyal Vs. State of Haryana and Others and CS/226/20- Sarla Holding Pvt. Ltd. Vs. State of Haryana and Others

In these matters, the illegal orders of the Deputy Commissioner dated 11.06.2020 ordering the change of the Girdhawari with a single stroke of pen for the last three decades, had been challenged, as done in the above matter at Serial No. (i) in CWP No. 10286 of 2020 titled Ansal Retreat Resident Welfare Association Vs State of Haryana and Another before the Hon'ble High Court of Punjab and Haryana. As there is already a stay against this order dated 11.06.2020 by the Hon'ble High Court of Punjab and Haryana, the proceedings in this matter shall remain under the umbrella of the decision of the above matter.

- iii. CS/271/20- Sudhir Agarwal Vs. Haryana Forest and Wildlife Department

This is a personal matter of Shri Sudhir Agarwal, wherein, he has contested some report of the forest department, and this has nothing to do with the present matter before the Hon'ble Commission.

- iv. CS/242/21- Ansal Retreat Resident Welfare Association Versus State of Haryana.

The Municipal Corporation, Sohna, again with the sole intention of pleasing the Deputy Commissioner, Gurugram against whom the Hon'ble NGT had passed very strong strictures, issued baseless and illegal notices/orders dated 16.06.2020 alleging that there is illegal construction in the farmhouse. Against these illegal notices/orders, a petition was filed in the court of Hon'ble Civil Judge (Jr. Division), Sohna, who granted a stay against the said illegal demolition wherein the order of the NGT has been explained in detail and the action of the Municipal Corporation, Sohna of issuing notices/orders of demolition has been held to be illegal.

- c) That the decision in CWP No. 110286 of 2020 and the decision in all other cases, as mentioned in the order of the Hon'ble NGT dated 19.10.2021 and as provided to the complainant through RTI, favours the review applicant and therefore not granting the relief to him in spite of favourable orders would be a great injustice to the innocent

consumers of the DHBVN, being represented by the Association, who have been paying for the electricity, being consumed by them, for the last thirty years.

- d) That the review applicant dwelled upon the other reasons as to why the Hon'ble Commission has erred in not granting the relief based on extraneous factors, which are much beyond the scope of Section 42 of the Electricity Act, 2003.
- e) That the review applicant drawn the kind attention of this Commission to PART VI of the Electricity Act, 2003 under the head "Distribution of Electricity" provisions with respect to distribution licensee, which is reproduced below:
"Section 42 (duties of distribution licensee and open access):
It shall be the duty of a distribution licensee to develop and maintain an efficient, coordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act."
- f) That the above section of the Electricity Act, 2003 clearly states that entire electrical installation and the connected infrastructure, has to be developed and maintained by the distribution licensee as it is its duty to maintain an efficient coordinated, and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.
- g) That in accordance with the above provisions and also the fact that the power is being supplied and revenue being collected by DHBVN-Distribution Licensee from the residents, the review applicant/applicant made several representations and requisitions to the DHBVN to take over the infrastructure relating to power/electricity from the developer and maintain it, but the same has not been taken over by the Licensee- DHBVN till date.
- h) That Ansals Aravali Retreat, Village Raisina, Tehsil Sohna, District Gurgaon has 675 farms which were sold in the year 1992 onwards and since then Dakshin Haryana Bijli Vitran Nigam (DHBVN) has provided around 300 connections and gets an approximate revenue of Rs. 10 lakhs every month from the said connections. Apart from this there are about 1200 electrical poles in the area and the minimum bill from these pole connections comes to Rs. 50,000/- per month. Hence it is submitted that the total revenue being earned by the Dakshin Haryana Bijli Vitran Nigam per annum from the Ansal Retreat comes to Rs. 1.80 Crores approximately.
- i) That the DHBVN has since then been installing connections and even providing connections to village outside Ansals Aravali Retreat for which connections is being taken from the feeders of the Retreat.
- j) That though the revenue goes to DHBVN directly for all the connections provided at Ansals Aravali Retreat, Village Raisina, Tehsil Sohna, Gurugram and also from the streetlights installed in entire area but the entire burden of maintaining and developing the infrastructure falls on the consumers.

Therefore, review applicant/applicant respectfully prayed that the review petition may kindly be accepted, and this Commission may be pleased to:

- i. Direct DHBVN being the distribution licensee, to develop and maintain an efficient and co-ordinated and economical distribution system in its areas of supply and to supply electricity in accordance with the provisions of the Act and to immediately take over the electrical infrastructure at Ansals Aravali Retreat, Village Raisina, Tehsil Sohna, Gurgaon.
 - ii. Direct DHBVN to kindly provide a regular feeder to the entire Ansals Aravali Retreat rather than providing a Rural feeder so that the supply of electricity could be provided to the residents 24 hours.
 - iii. Direct DHBVN to provide the requisite load in view of the power being provided to various villages enroute to Ansals Aravali Retreat.
6. After hearing the arguments advanced by the review applicant, the Commission considered it appropriate to grant an opportunity of hearing/submissions to the other party to revert on the review application, therefore, directed the review applicant to supply copy of the review application to the respondent and further directed the respondents to file the reply within seven days.
7. Reply dated 08.08.2022 filed by respondent-DHBVN is reproduced as under:

- 7.1 That the review applicant has filed the present review petition seeking review of order dated 19.10.2021 ("**Impugned Order**") passed in HERC/PRO/05-2017 ("**Petition**"). The review applicant has filed the petition under Section 42 read with Section 129 of The Electricity Act,2003 ("**Act**") read with the Haryana Electricity Regulatory Commission (Guidelines for Establishment of Forum of Redressal for Grievances of the Consumers, Electricity Ombudsman and Consumer Advocacy) Regulations, 2016 ("**Regulations**") for Handing Over Taking Over of the entire electricity infrastructure at Ansals Aravali Retreat, Village Raisina, Tehsil Sohna, district Gurgaon ("**Subject Area**") and further sought prayer qua Respondent to maintain the Subject Area.
- 7.2 That this Hon'ble Commission has passed the impugned order after hearing parties and relevant portion is reproduced below for reference: -

"8.2 At the outset, Dr. Yash Garg, Deputy Commissioner Gurugram appeared in the matter and submitted that the requisite report has been filed on 06.10.2021. Eight cases related to Ansal Aravali Retreat Raisina Village are pending for disposal before various courts of law and the National Green Tribunal. He further submitted that in compliance of orders of the Hon'ble High Court dated 03.05.2012 (Para 34

and 36) in CRM-M No. 51514 of 2007 and CRM-M No. 880 of 2010 and National Green Tribunal order dated 23.10.2018, in OA No 04 of 2013 and OA No 28 of 2015, the then Deputy Commissioner Gurugram passed the order dated 11.06.2020. After receiving the copy of said orders, rapat no. 499 dated 16.06.2020 and rapat no. 504 dated 17.06.2020 were made by the Halqa Patwari, Raisina in the Rapat Roznamcha for giving effect to the said order. However, no entry qua the said order is made in the Jamabandi till date as the order dated 11.06.2020 passed by the then DC, Gurugram has been stayed by the Hon'ble High Court in CWP No. 10286 of 2020 titled Ansal Retreat Residence Welfare Association Vs State of Haryana and another vide its order dated 20.07.2020 which is still in force.

8.4 The Commission observes that the Hon'ble Punjab and Haryana had granted stay in CWP No. 10286 of 2020 titled Ansal Retreat Residence Welfare Association versus State of Haryana and another which prevents the Deputy Commissioner, Gurugram from changing the nature of the land in the records. Similarly, eight other cases are pending before various other Courts and Tribunal as far as litigations qua the Ansal Aravali Retreat, village Raisina.

8.5 Keeping in view the above, the Commission is not inclined to pass any order till the final outcome of CWP No. 10286 of 2020 (supra) and other cases. **Therefore, the Commission decides to dispose of the instant petition without any direction to the respondents."**

- 7.3 That the review applicant has filed the present review petition challenging above quoted paragraph of the impugned order. It is submitted that the respondent has not filed paragraph wise reply to the review petition as the review applicant has not taken any ground of review and assailed same grounds as raised in the original petition.
- 7.4 At the outset, the answering respondent submitted that the above review petition filed by the review applicant is misconceived and liable to be dismissed. It is submitted that the answering respondent denies each and every statement, contention, averment, submission and allegation made in the above petition that is contrary to whatever is stated herein and nothing therein shall be deemed to have admitted by the answering respondent for non-traverse or otherwise, unless specifically admitted herein. The answering respondent craves leave to file an additional reply or additional documents, if deemed necessary. It is submitted that reliance placed by the review applicant on compilation of judgements is erroneous and reply of the same has been dealt in preliminary submissions.

PRELIMINARY SUBMISSIONS

- 7.5 It is submitted that the review applicant has argued the present review petition on 03.8.2022 and miserably failed to address any ground of review under section 94 (1) (f) of the Act read with Regulations. It is submitted that the impugned order has been passed by this Hon'ble Commission keeping in view pendency of CWP No. 10286 of 2020 before the Hon'ble Punjab and Haryana High Court and now it is listed on 22.09.2022. It is important to note that the review applicant is trying to circumscribe proceedings pending before the Hon'ble High Court of Punjab and Haryana.
- 7.6 It is submitted that present review petition is not maintainable and liable to be dismissed. It is well settled law that review petition has a limited purpose and cannot be allowed as "Appeal in Disguise", which is well settled by the Hon'ble Supreme Court in the judgement titled as Lily Thomas Vs. Union of India (2000) 6 SC 224, Para 56. In present case, the review applicant is assailing a finding which is given by this Hon'ble Commission on merits after examining the issue involved in CWP No. 10286 of 2020 and decision of said writ petition will have bearing in this case.
- 7.7 It is submitted that an error contemplated under the power of review is that same should not require any long-drawn process of reasoning. It is relevant to note that a wrong decision can be subject to appeal to a higher forum but review is not permissible on the ground that court proceeded on a wrong proposition of law. Therefore, it is not permissible for the review applicant to assail the impugned order on ground that the decision be re-heard as there is a clear distinction between erroneous decision and an error apparent on the face of record. It is well settled by the Hon'ble Supreme Court in the judgement titled as Inderchand Jain (deceased by LRs) Vs. Motilal (deceased by LRs), 2009 AIR SCW 5364, that the court in a review petition does not sit in appeal over its own order and rehearsing of the matter is impermissible in law. In the present case, the review applicant is arguing the case on merits and seeking to re-open the case which is only permissible in the appeal. It is submitted that respondent has clearly taken stand on maintaining the electrical infrastructure and the review applicant has failed to file undertaking directed by this Hon'ble Commission.
- 7.8 It is submitted that under Order 47, Rule 1 of Code of Civil procedure, 1908 (CPC), a judgement may be open to review, inter alia, if there is a mistake or an error apparent on the face of the record. It is submitted that 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. In the present case, the review applicant is assailing the impugned order on the grounds that were rejected by this Hon'ble Commission and

specifically in terms of stay granted by the Hon'ble High Court of Punjab and Haryana.

- 7.9 It is submitted that the review applicant has not made any case of error apparent on the face of record in its submissions, which is an essential ground of review under section 94 of the Act read with Order 47 of CPC. In the matter of "Rajender Kumar v. Rambhai, (2007) 15 SCC 513", the Hon'ble Supreme Court has categorically held that in the absence of any error on the face of the order, the finality attached to the order cannot be disturbed. The relevant extract of the said judgement is reproduced hereinbelow:

"6. The limitations on exercise of the power of review are well settled. The first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to failure of justice. In the absence of any such error, finality attached to the judgment/order cannot be disturbed."

- 7.10 In another decision titled as Ajith Babu and Ors. vs. Union of India and Ors., 1997 (6) SCC 473, the Hon'ble Supreme Court has held as follows:-

"The right of Review is not right to appeal where all questions decided are open to challenge. The right of review is possible only on limited grounds, mentioned in Order 47 of the CPC. Although strictly speaking the Order 47 of the CPC may not be applicable to the Tribunal, but the principles contained therein surely must be extended. Otherwise, their being no limitation on the power of review, it would be an appeal and there would be no certainty of the finality of the decision".

- 7.11 The Hon'ble Supreme Court in the matter of Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius, (1955) 1 SCR 520, has held that the scope of an application for review is much more restricted than that of an appeal. The relevant extract of the said Order is reproduced hereinbelow:

"32. Before going into the merits of the case it is as well to bear in mind the scope of the application for review which has given rise to the present appeal. It is needless to emphasize that the scope of an application for review is much more restricted than that of an appeal. Under the provisions in the Travancore Code of Civil Procedure which is similar in terms to Order 47 Rule 1 of our Code of Civil Procedure, 1908, the court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein. It may allow a review on three specified grounds, namely, (i) 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 him at the time when the decree was passed, (ii) mistake or error apparent on the face of the record, and (iii) for any other sufficient reason.”

7.12 Therefore, a review lies only for a patent error which could be pointed out without any elaborate argument to say there is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it. It is only then a clear case of error apparent on the face of the record would be made out. This observation was also made by the Hon'ble Supreme Court in the matter of Meera Bhanja v. Nirmala Kumari Choudhury, (1995) 1 SCC 170. The relevant extract of the said judgement is reproduced hereinbelow:

“9. Now it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale [AIR 1960 SC 137: (1960) 1 SCR 890] wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record:

An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ.”

7.13 It is submitted that the review applicant cannot be allowed to change the nature of the order by way of present review petition which is arbitrary and without any basis.

7.14 The Hon'ble Supreme Court vide the judgement titled as, Thungabhadra Industries Ltd. Vs. Govt. of A.P. (1964) 5 SCR 174, held that the power of review is not analogous to the appellate power and by no means can be treated as appeal in disguise:-

“That the Petitioners now in the review jurisdiction cannot be permitted to seek a relief which would be tantamount to the

passing of an entirely new order. The Petitioner is trying to get a new order through the present Petition under Review which is not permissible under law. Thus, the Petitioner is seeking to implement the effect of the subsequent judgment passed by Hon'ble APTEL on the directions of this Hon'ble Commission by way of present M.A., which is bad in law and devoid of merits."

- 7.15 The issue of taking over of infrastructure relating to power/electricity from the review applicant has already been dealt by this Hon'ble Commission. It is submitted that the learned State Registrar, Chandigarh vide its order dated 20.03.2017 has declared Raisana Aravali Retreat Residents Welfare Association ("Association") as an illegal Resident Welfare Association with no moral rights to represent the review applicant's Retreat.
- 7.16 It is submitted that the review applicant had no valid authority to approach this Hon'ble Commission at first place in Original Petition. It is also noteworthy that the systems installed at the area of Association is 29 years old and become weak.
- 7.17 It is submitted that infrastructure capacity currently installed at Ansal Aravali Retreat is only 2.5 MW against required infrastructure of 10 MVA. It is further submitted that there is acute inadequacy in existing infrastructure capacity of about 7.5 MVA and a 33 KV substation has to be commissioned in the said area.
- 7.18 It is submitted that no electrification plan was submitted by the review applicant and deposit estimate has been approved by erstwhile HSEB for releasing tube well connection for using land for agricultural purposes only. It is pertinent to mention that answering respondent has never released any commercial connection at time of releasing connections to the consumers in the subject area. In 2017, Vigilance Department of respondent conducted an inspection in the said area and found change in use of connections from horticulture to commercial and some other categories.
- 7.19 Consequently, electricity charges were assessed for such unauthorized use of electricity in terms of Sales Circular No. D-42 of 2014. Thereafter, some consumers have challenged the demand notices/provisional assessment orders before Civil Court, Gurugram wherein Court vide interim order has granted injunction restraining respondent from disconnecting the electricity supply. It was further directed to respondent to raise the bills in terms of consumption charges till pendency of the suit.
- 7.20 It is submitted that the answering respondent has issued connections in subject area till 2016 and post 2016, answering respondent has refused in connections in subject area due to demolishing of all illegal constructions by District Administration and in terms of letter dated 24.06.2016 issued by the Haryana Pollution Control Board read with notification dated 07.05.1992

("Notification") issued by Ministry of Environment and Forest. Therefore, said area is prohibited for electrification activities.

- 7.21 It is submitted that one such consumer who was denied electricity connection, had filed a complaint against the respondent before Hon'ble CGRF in Case No. 1411 of 2016, wherein the Hon'ble CGRF vide order dated 09.09.2016 directed respondent to issue connection to such consumer. The said order was upheld by this Hon'ble Commission vide order dated 18.07.2017 passed in PRO No. 6 of 2017, pursuant to which, the respondent started giving connections in the area.
- 7.22 It is submitted that tentative cost of implementing the required costs is calculated in terms of Sales Circular D-42 of 2014 which was Rs. 17,57,15,848/. The said cost has been prepared by respondent considering applicable load norms for agricultural/farm lands. It is noteworthy that electrical infrastructure can be taken over by the respondent only when builder or authorized RWA has executed electrification work as required in terms of load requirement or in the alternative, RWA or builder deposits the above said amount.
- 7.23 It is important to mention that this Hon'ble Commission vide order dated 15.04.2019 has directed the review applicant to give an undertaking as to whether they are ready to bear cost of upgradation of system and cost of making up inadequacy. Till date, the review applicant has not filed any affidavit, rather preferred this review petition which is arbitrary. It is also relevant to mention that the review applicant has not submitted details of various cases of land disputes pending against the review applicant in various forums, which was directed to be filed by this Hon'ble Commission vide order dated 19.06.2019.
- 7.24 It is submitted that location involved in the present case is a closed area which is protected under the Punjab Land Preservation Act, 1990 read with Forest Conservation Act, 1980. The Notification indicated that said area has been prohibited for electrification activities. The respondent had also issued an advertisement which reflected that construction made in subject area is illegal and the government is demolishing the same. In order to determine the status of land, the list of pending cases, before different courts, was required to be submitted by the review petitioner for proper adjudication of the matter by the Hon'ble Commission.
- 7.25 It is pertinent to mention that original electrification plan comprised only of farm land, whereas, now there are many commercial establishments in the subject area. This Hon'ble Commission vide its interim order dated 27.11.2019, in order to ascertain the status of land decided that directions be issued to Deputy Commissioner, Gurugram to send report regarding present status of land of subject area and whether there is any Gair Mumkin/Illegal farm house(s) and any litigation pending

regarding land being a part of Aravli Forest Land in any court of law.

- 7.26 Thereafter, report was received by the Haryana State Pollution Control Board wherein it was stated that there are 425 farm houses against which prosecution were filed by Gurugram Region (south) before Special Environment Court, Faridabad under violation of Aravali Notification dated 07.05.1992. It is submitted that all 425 farm houses are illegal farm house.
- 7.27 Thereafter, Deputy Commissioner, Gurugram filed a report on 06.10.2021 wherein eight cases related to subject area were shown to be pending for disposal before various courts of law and the Hon'ble National Green Tribunal. He further stated before this Hon'ble Commission on 06.10.2021 that it has passed the order dated 11.06.2020 in compliance of the order passed by the Hon'ble High Court of Punjab and Haryana in CRM NO. 51514 of 2007 and CRM No. 80 of 2010 and order passed by the Hon'ble National Green Tribunal passed in OA No 04 of 2013 and OA No. 28 of 2015. It was further observed by this Hon'ble Commission that the Hon'ble High Court has granted stay in CWP No. 10286 of 2020 titled as Ansal Retreat Residence Welfare Association Vs. State of Haryana & Anr. Vide order dated 20.07.2020 which is occupying field of law till date and matter is next listed on 22.09.2022.
- 7.28 Therefore, it is the stay order dated 20.07.2020 which prevented Deputy Commissioner, Gurugram from changing the nature of land in records. It is submitted that the review applicant is challenging the impugned order on same grounds as alleged in original petition, thus, not maintainable under the scope of review petition.

Commission's Order:

8. Upon considering the submissions of both the parties, the Commission considered it appropriate to examine the issue of maintainability of the present review petition, before deliberating on the merits of the case. Accordingly, the Commission has perused the scope of review jurisdiction, as per the provisions of Regulation 57 and 58 of the HERC (Conduct of Business) Regulations, 2019. The relevant Regulation is extracted below: -

“REVIEW OF THE DECISIONS, DIRECTIONS, AND ORDERS:

57

- (1) *All relevant provisions relating to review of the decisions, directions and orders as provided in the Code of Civil Procedure 1908, as amended from time to time, shall apply mutatis mutandis for review of the decisions, directions and order of the Commission. Provided that the Commission may on the application of any party or person concerned, filed within a period of 45 days of the receipt*

of such decision, directions or order, review such decision, directions or orders and pass such appropriate orders as the Commission may deem fit.

(2) No application for review shall be considered unless an undertaking has been given by the applicant that he has not preferred appeal against the decision, direction, or order, sought to be reviewed, in any Court of Law.

(3) No application for review shall be admitted/ considered unless an undertaking has been given by the applicant that in case he files an appeal of the decision, direction or order of which review is pending adjudication, he shall immediately inform the Commission regarding the fact of filing the appeal.

58 *The Commission may on its own motion or on the application of any party correct any clerical or arithmetical errors in any order passed by the Commission.”*

9. Additionally, the relevant clause of Order no. XLVII of the Code of Civil Procedure 1908, has also been examined. The same is reproduced below: -

“1. Application for review of judgment-

(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes.

and who, from 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 decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applied for the review.

10. The Commission has perused the judgement of the Hon’ble Delhi High Court in Aizaz Alam Verses Union of India and Ors (2006 (130)) DLT 63: 2006(5) AD (Delhi) 297 by which it has been expanded that the review has to be strictly confined to the scope and ambit of Order XLVII, Rule 1 of the Civil Procedure Code, 1908.

11. The Commission observes that apart from a re-examination of the issues in exercise of appellate jurisdiction, no review is permissible except in the limited cases where the matters requiring review fall within the statutorily prescribed contours of threefold grounds viz, firstly, previously unavailable or newly discovered fact, secondly, an error apparent on the face of record, and thirdly, any other sufficient reason. A consideration of the submissions made by the review applicant indubitably reflects the absence of any of the aforesaid threefold statutory facts. The review applicant has not been able to establish the discovery of a previously unknown fact nor has there been any substantiation by the review applicant which will hint to any error apparent on the face of record. As far as the third statutory requirement for review is concerned, this Commission is cognizant of the fact that the order, as impugned in this petition, contains no direction in particular. The impugned order was passed while making it subject to the outcome of the decision pending before other forum and the impugned order suffers no error apparent or patent irregularity, being a justified decision. Also, the review applicant has neither been able to establish the discovery of a new fact nor any error apparent on the face of record. Hence, no other sufficient cause for review is made out in the present petition.
12. In view of the above discussions and findings, the Commission finds no merit in the submissions of the review applicant. Hence, the review petition is hereby dismissed as not maintainable.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 01/09/2022.

Date: 01.09.2022
Place: Panchkula

(Naresh Sardana)
Member

(R.K. Pachnanda)
Chairman