

**Before the Karnataka Electricity Regulatory Commission, Bangalore**

**Dated this the 28<sup>th</sup> day of October, 2004.**

**Present**

- |                                  |          |                 |
|----------------------------------|----------|-----------------|
| <b>1. Sri. Philipose Matthai</b> | <b>-</b> | <b>Chairman</b> |
| <b>2. Sri. H.S. Subramanya</b>   | <b>-</b> | <b>Member</b>   |
| <b>3. Sri. S.D.Ukkali</b>        | <b>-</b> | <b>Member</b>   |

**CaseNo.RP- 1/2004**

**Between:**

Sri Kshethra Dharmasthala Institution,  
Dharmasthala,  
Belthangadi Taluk,  
Dakshina Kannada.  
Rep. by its Dharmadhikari Sri Veerendra Hegde.

**Petitioner**  
(By Sri K.M.Nataraj. Adv.)

**and**

1. Managing Director,  
KPTCL,  
Cauvery Bhavan,  
Bangalore
2. MESCOM  
Represented by  
Asst. Exe. Engineer, (Elec.),  
Belthangadi  
Dakshina Kannada Dist.

**Respondents**  
(By Sri S.S.Nagananda Adv.)

The Petitioner has sought a Review of the order of the Commission in case No. OP 18/2003 dated 9th October 2003. The Commission, while rejecting the earlier petition of the Petitioner in the said case, observed as follows:

"We have carefully considered the various issues raised before us. The petitioner is seeking reclassification of the institution from the existing categories of LT-1 (B) and LT-2 (A). The Petitioner's request is vague. It has not made any specific request as to in which category it has to be included. Admittedly, it has not made

use of the opportunity to raise its objections at the time of public hearings, specially provided for such purposes, prior to fixing the Tariff and related matters. Moreover it has not been able to explain as to how the religious and charitable institutions are affected by the existing classification. The Tariff order cannot be amended by exercising powers under the E&SD Code, as claimed by the learned Counsel for the petitioner. Regulation 47 of the K.E.R.C.(E&SD) Code 2000-2001 refers to the rights of the Commission to cancel or alter or add to any of the provisions of the Code, and the Code has nothing to do with the Tariff making. The Tariff is formulated under Section 27 of the Karnataka Electricity Reforms Act 1999, and there is no provision to accede to the requests like the one made by the petitioner."

2. The petitioner has raised the following grounds in support of his Review Petition:
  - i) The billing system adopted under the rate schedule fails to bring equality among the unequals, which is violative of the Article 14 of the Constitution. The energy charges should be proportionate to the fixed charges paid by the consumer. Otherwise it would cause greater hardship to the consumers.
  - ii) The petitioner's request is not vague and that he specifically requests to bill the religious and charitable institution at the average cost of supply.
  - iii) The petitioner had made use of the opportunity at the time of Tariff Hearing and filed his objection bearing No .A 4701. The Chief Engineer (RA) had given a rejoinder to the objection petition.
  - iv) The religious and charitable institutions are not profit making organizations and their interest would only be safeguarded by levying average cost of supply of energy.
  
3. The Respondents have put in appearance and filed statement of objections.
  - (i) The Respondents claim that there is no error apparent on the face of the record and that there is no fresh material placed before the Commission, which warrants the review of impugned order.
  - ii) The Review Petition is delayed and there is no provision to condone the delay. Therefore the petition is not maintainable.

- iii) No new development has taken place after passing the impugned order nor any new material has been discovered. The facts and figures pleaded in the present Review Petition cannot be looked into and they should be rejected.

4. We have heard the Counsels for the Review-Petitioner and the Respondents. The Counsel for the Review-Petitioner has also filed the written arguments in support to his Review Petition. The Counsel for the Petitioner has urged that there should be some linkage between the two parts of the tariff i.e. fixed charges and the energy charges, and that such linkage alone would help the religious and charitable institutions. He maintained that he is not seeking any amendment to the Tariff Order and he could be given relief by altering the billing mechanism. He argued that the Commission has absolute powers under various provisions of KER Act 1999 under which it can hear the Review Petition and pass appropriate orders. The Counsel for the Respondents reiterated the issues raised in the statement of objections and claimed that the Review Petition is not maintainable on account of the delay in filing the petition and also for the reason that no new evidence is placed before the Commission which would warrant the review of the impugned order. He also contended that there is no error apparent on the face of the records.

5. We have carefully considered the points urged by the learned Counsels for the Review-Petitioner and the Respondents. Order 47 Rule 1 of the Civil Procedure Code prescribes the following conditions precedent to any party invoking the power of review:

**(a) there must be 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 made;**

**(b) or on account of some mistake or error apparent on the face of the record;**

**(c ) or for any other sufficient reasons.**

What is being urged before us by the Review-Petitioner, is the change in the billing procedure and that there should be some linkage between the two parts of the tariff i.e., fixed charges and the running charges. He has not produced any new evidence or discovery of evidence subsequent to passing of the impugned order. He has not brought out any error that is apparent on the face of the records that would warrant the review of impugned order. Thus the petitioner has not made out any point satisfying any of the three conditions prescribed by the Order 47 Rule 1 of CPC. Therefore we feel that the petition does not meet the basic requirements of a review prescribed under Order 47 Rule 1 of CPC. Therefore the review petition fails at the stage of maintainability and is required to be rejected. The contention of the Counsel for the Petitioner that he could be given relief by issuing suitable orders changing the procedure of billing as suggested by him is not correct as it would affect the basic tariff structure and would amount to the amendment of the Tariff Order.

6. The Review Petition is, therefore, **rejected** as not maintainable. It is so ordered.

sd/  
**(Philipose Matthai)**

sd/  
**(H.S.Subramanya)**

sd/  
**(S.D.Ukkali)**